
TIGARD CITY COUNCIL
MEETING

August 27, 2002 6:30 p.m.

TIGARD CITY HALL
13125 SW HALL BLVD
TIGARD, OR 97223



PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Visitor's Agenda items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, Ext. 309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, x309 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

A G E N D A
TIGARD CITY COUNCIL MEETING
August 27, 2002

6:30 PM

- STUDY SESSION
 - > UPDATE – WATER ISSUES
 - ❖ Councilor Patton
 - > UPDATE – RANDALL GRANT PROGRAM
 - ❖ City Administration Staff
- EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- 1. BUSINESS MEETING
 - 1.1 Call to Order - City Council & Local Contract Review Board
 - 1.2 Roll Call
 - 1.3 Pledge of Allegiance
 - 1.4 Council Communications & Liaison Reports
 - 1.5 Call to Council and Staff for Non-Agenda Items
- 2. CERTIFICATE OF RECOGNITION – COUNCILOR JOYCE PATTON
 - ❖ Presentation by Mayor Griffith
- 3. MAYORS' PINEWOOD DERBY
 - ❖ Announcement by Mayor Griffith
- 4. VISITOR'S AGENDA (Two Minutes or Less, Please)

5. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:
 - 5.1 Approve Council Minutes: August 13, 2002
 - 5.2 Approve Amendment to Municipal Court Judge Michael J. O'Brien's Personal Services Contract
 - Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.
6. CONSIDER AMENDMENT TO CHAPTER 12.02 (SANITARY SEWER AND SURFACE WATER MANAGEMENT) OF THE TIGARD MUNICIPAL CODE MAKING APPROPRIATE NAME AND TITLE CHANGES
 - a. Staff Report: Finance Staff
 - b. Council Discussion
 - c. Council Consideration: Ordinance No. 02-____
7. CONSIDER AMENDMENT TO CHAPTER 12.03 (BILLING AND COLLECTION OF UTILITY CHARGES) OF THE TIGARD MUNICIPAL CODE CLARIFYING PROCEDURES IN THE COLLECTION OF UTILITY CHARGES AND MAKING APPROPRIATE NAME AND TITLE CHANGES
 - a. Staff Report: Finance
 - b. Council Discussion
 - c. Council Consideration: Ordinance No. 02-____
8. CONSIDER GRANTING A TELECOMMUNICATIONS FRANCHISE TO TIME WARNER TELECOM OF OREGON LLC
 - a. Staff Report: Finance Staff
 - b. Council Discussion
 - c. Council Consideration: Ordinance No. 02-____
9. CONSIDER INCREASING, ADDING, AND ELIMINATING CERTAIN WATER CHARGES BY AMENDING EXHIBIT A TO RESOLUTION NO. 02-06
 - a. Staff Report: Finance Staff and Public Works Staff
 - b. Council Discussion
 - c. Council Consideration: Resolution No. 02-____

10. CONSIDER AMENDMENT TO CHAPTER 12.10 (WATER SYSTEM RULES & REGULATIONS) OF THE TIGARD MUNICIPAL CODE (TMC) UPDATING SEVERAL PROVISIONS OF WATER SERVICE TO ALIGN TMC REQUIREMENTS WITH CURRENT UTILITY SERVICE PRACTICES AND OTHER TMC PROVISIONS
 - a. Staff Report: Public Works Staff
 - b. Council Discussion
 - c. Council Consideration: Ordinance No. 02-_____

11. PUBLIC HEARING TO CONSIDER AUTHORIZATION OF THE ISSUANCE AND SALE OF THE CITY OF TIGARD'S GENERAL OBLIGATION BOND AND GENERAL REFUNDING BOND TO THE OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT TO FINANCE THE COSTS OF THE NEW TIGARD LIBRARY
 - a. Open Public Hearing
 - b. Summation by Finance Staff
 - c. Public Testimony
 - d. Staff Recommendation
 - e. Council Discussion
 - f. Close Public Hearing
 - g. Council Consideration: Resolution No. 02 - _____

12. COUNCIL AS LOCAL CONTRACT REVIEW BOARD TO CONSIDER THE AWARD OF THE CONTRACT FOR ARCHITECTURAL AND DESIGN SERVICES FOR THE NEW TIGARD LIBRARY
 - a. Staff Report: Engineering Staff
 - b. Board Discussion
 - c. Board Consideration: Motion to award the contract.

13. CONTINUATION OF PUBLIC HEARING (QUASI-JUDICIAL) FROM JULY 23, 2002 – CONSIDER AN ORDINANCE TO EXEMPT PROPERTIES THAT ARE ZONED MUR 1 OR 2 THAT WERE ZONED COMMERCIAL PRIOR TO MARCH 28, 2002, FROM MEETING CERTAIN REQUIREMENTS BEFORE BEING PERMITTED TO HAVE A COMMERCIAL USE

REQUEST: The request is to modify the existing Development Code language to exempt properties that were zoned commercial prior to March 28, 2002 from

being

required to meet minimum residential density requirements prior to being permitted to have a commercial use on the property. There are 10 parcels (5.25 acres) within the City of Tigard's portion of the Regional Center that this exemption will apply to and are impacted by this amendment. Approximately 1.63 acres were identified as vacant or re-developable in determining target capacity numbers for the Regional Center, therefore, the number of units that would be lost if no residential use were constructed on these lots is approximately 42 units (if minimum densities were constructed). **LOCATION:** The Washington Square Regional Center area is bounded generally by Fanno Creek on the west, SW Greenburg Road and Hall Boulevard on the east, Red Tail Golf Course to the north, and Highway 217, including the Ash Creek area on the southern border. The MUR 1 and 2 zones are located within the Regional Center, generally west of Hall Blvd and east of Ash Creek. **ZONE:** Mixed Use Residential (MUR) 1&2. **APPLICABLE REVIEW CRITERIA:** Community Development Code Sections 18.380.020, 18.390.060; Comprehensive Plan Policies 1.1.1, 2.1.1 2.1.2, 5.1 and 6.1.1; Statewide Planning Goals 1, 2, 9, and 10; and Metro Functional Plan Titles 1 and 7.

- a. Open Public Hearing – Continued from July 23, 2002
- b. Declarations or Challenges
- c. Staff Report: Community Development Department
- d. Public Testimony
 - **Proponents**
 - Opponents
 - Rebuttal
- e. Staff Recommendation
- f. Council Questions
- g. Close Public Hearing
- h. Council Consideration: Ordinance No. 02- ____

14. CONSIDER POLICY DIRECTION FOR BULL MOUNTAIN ANNEXATION

- a. Staff Report: Community Development Staff
- b. Council Discussion
- c. Council Consideration: Resolution No. 02-____

15. CONSIDER RENEWAL OF THE INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE CITY OF TIGARD TO PROVIDE PLANNING-, BUILDING-, AND ENGINEERING-RELATED SERVICES TO THE URBAN SERVICES AREA
 - a. Staff Report: Community Development Staff
 - b. Council Discussion
 - c. Council Consideration: Motion to authorize the Mayor to sign the Urban Services Intergovernmental Agreement between the City of Tigard and Washington County, amending and extending the agreement for five years.
16. COUNCIL LIAISON REPORTS
17. NON AGENDA ITEMS
18. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
19. ADJOURNMENT

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AGENDA ITEM # _____
FOR AGENDA OF _____

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Update on Randall Grant Program

PREPARED BY: Liz Newton DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

An update on the Randall Funding and Development Grant Program.

STAFF RECOMMENDATION

No action necessary.

INFORMATION SUMMARY

As Council is aware, the city's contract with Randall Funding and Development expired on June 12, 2002. However, Randall Funding and Development will continue to provide services to the city at no cost for the 2002-03 fiscal year. Specifically, the city continues to receive weekly grant alerts and Randall will provide grant research and write foundation, competitive, and non-competitive grants as requested by the city in letters of authorization.

Since the last update to Council on April 23, 2002, the city was awarded \$10,667.99 from the Department of Justice for reimbursement of fifty percent of the cost of bullet proof vests. Randall identified the grant opportunity and prepared the grant on behalf of the city.

The city will pursue funding through the Meyer Memorial Trust for improvements to the open space portion of the new library site for an environmental education component. A letter of authorization for assistance has already been submitted to Randall. There is no deadline for grant submissions to the Meyer Memorial Trust so the timing of preparation of that grant request will be determined as the library project progresses.

The city's contact at Randall has identified new federal legislation that was just approved that may be a source for funding mobile data terminals (MDTs) for police vehicles. The grant description should be released around October at the beginning of the federal fiscal year. We will review the description and determine whether or not to apply at that time.

OTHER ALTERNATIVES CONSIDERED

None.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

None.

FISCAL NOTES

No cost associated with this report.

AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Presentation of Certificate of Recognition – Councilor Joyce Patton

PREPARED BY: Cathy Wheatley DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Presentation by Mayor Griffith of a Certificate of Recognition to Councilor Joyce Patton for her years of service (1999-2002) on the Tigard City Council.

STAFF RECOMMENDATION

N/A

INFORMATION SUMMARY

Councilor Patton submitted her resignation as Tigard City Councilor effective September 1, 2002 (see attached letter). To acknowledge Councilor Patton's service to the City of Tigard as a Tigard City Councilor (1999-2002), Mayor Griffith will present a Certificate of Recognition to Councilor Patton during the August 27, 2002, Council meeting.

OTHER ALTERNATIVES CONSIDERED

N/A

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

- Letter dated August 12, 2002, from Tigard City Councilor Joyce Patton submitting her resignation as Councilor effective September 1, 2002.

FISCAL NOTES

N/A

August 12, 2002

City of Tigard
Attn: Mayor James Griffith
13125 SW Hall Blvd.
Tigard, Oregon 97223

RE: Letter of Resignation

Dear  Mayor Griffith;

It is with regret that I must submit my resignation as a Tigard City Councilor effective September 1, 2002. I will be moving out of the jurisdiction and must step down. It has been an honor and a privilege to serve with you and my fellow councilors. I am confident that, with such dedicated leadership, the City of Tigard is in good hands.

I also want to commend the outstanding City staff that I have been fortunate enough to meet and work with for the past several years. I particularly want to thank Bill Monahan, his executive staff, and all of the Department Directors for their leadership, professionalism and dedication to the citizens of the City of Tigard.

Finally, I am grateful to have had the opportunity to serve the citizens of Tigard. This has been my community for almost 20 years. My son attended Tigard/ Tualatin schools. It is not easy to move out of the City, although we are not going far – just across the way to Beaverton. However, I want you to know that I plan to continue my involvement with the City of Tigard to the extent that my job commitments allow.

Sincerely,



Joyce Patton
Tigard City Councilor

cc:

Councilor Brian Moore
Councilor Craig Dirksen
Councilor Ken Scheckla
Mr. William Monahan, City Manager

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
August 13, 2002

- STUDY SESSION

Meeting was called to order at 6:32 p.m.

Mayor Griffith's mother passed away recently and he thanked the Council and staff for the beautiful flowers and kind words extended to him and his family.

> UPDATE ON THE URBAN SERVICES AGREEMENT

Community Development Director Hendryx reviewed this item with the City Council. The renewal of the Urban Services Agreement will be before the Council for approval on August 27, 2002. A memo to the City Council from Mr. Hendryx is on file in the City Recorder's office outlining the issues to be considered and noting that the agreement has been a benefit to the City.

Also coming together for Council review are the results of the Bull Mountain Survey on annexation and the policy decision to be made on non-island annexations. In response to a question from Councilor Scheckla, Mr. Hendryx confirmed that the policy on whether the County will collect parks system development charges in the urban services area is still outstanding. City Manager Monahan noted that staff has made arrangements to meet with County officials on August 20 to discuss the SDC collection policy as well as other matters. Councilor Scheckla requested updated information on the number of homes built last year and the dollars that were lost because this SDC collection was not done.

The Urban Services Agreement is currently in place under an extension to the agreement term that will expire on September 9, 2002. Mr. Hendryx advised if there are still issues that are outstanding, the Agreement could be extended for another 120 days.

City Manager Monahan noted the need (citing the recent information obtained from the Bull Mountain annexation survey) for the County to inform residents about their position on annexation of urban developed areas.

Mr. Hendryx advised that if the City proceeds with the annexation plan and the Bull Mountain annexation question is approved at the November 2003 election, then this area would be on the City's tax rolls July 1, 2004. In the event the voters are asked to consider annexation and then approve annexation, the County has agreed to collect SDC's between November 2003 and July 2004.

Mr. Hendryx noted that if the Council approves the Urban Services Agreement, that the City is not locked in for five years; there can be reasons to reevaluate and renegotiate the Agreement.

Mayor Griffith and Councilor Dirksen questioned Section II.A.17. of the draft agreement regarding street maintenance citing the decision to discontinue the street maintenance component of the agreement. Mr. Hendryx will make sure the language is reviewed to make sure the intent of this section is clear.

> DISCUSSION ON STREET MAINTENANCE FEE CALCULATION
ADJUSTMENTS

City Engineer Duenas reviewed this item with the Council. The street maintenance fee ordinance and resolution are scheduled to come before the Council on August 27, 2002, for final consideration. A packet of information, which is on file with the City Recorder, was distributed to the City Council for review. Mr. Duenas reviewed this information which included letters received regarding opposition and concerns about the fee as well as the proposed adjustments to the fee rates.

After Council discussion, it was determined this item would be removed from August 27, 2002, City Council meeting. Further discussion on this matter will be held either on September 10, 2002 (Council Study Session), or September 17, 2002 (Council Workshop Meeting) depending on the City Attorney's availability. The issues to be discussed include the legal question raised as to whether the "fee" should be considered a "tax." Also to be discussed is clarification on whether the street maintenance funds collected would be used for right-of-way and road maintenance or just road maintenance.

City Manager Monahan noted the need to get the word out to the public about the structure of the street maintenance fee rates for commercial and residents.

There was discussion about the possibility of Washington County adopting enabling legislation (county-wide) that would set the framework for each City to adopt a street maintenance fee. It was clarified that this would not mean that two fees (County and City) would be collected.

> ADMINISTRATIVE ITEMS

- Request for waiver of potential conflict of interest. City Manager Monahan received a request from attorney Edward J. Sullivan for a waiver of conflict in order to assist Leon LeFebvre with a land use matter regarding an outbuilding at his home at 15130 SW 150th on Bull Mountain.

Consensus of Council was to grant the waiver with the usual condition that the waiver does not extend to Mr. Sullivan's representation in any action beyond the local level at LUBA, the Circuit Court, or with any other appellate proceedings.

- Council discussed whether a representative from Tigard should attend the upcoming Rail-Volution Conference in Washington D.C. Consensus was that as long as someone from the "west side" was attending the conference, there did not appear to be a need for a Tigard representative at this time.
- Councilor Patton distributed to the City Council her letter of resignation as Tigard City Councilor effective September 1, 2002. After discussion, it was the recommendation of Councilor Patton and the consensus of Council that Councilor Moore would become the Council liaison for water issues and Councilor Dirksen would serve as the Council liaison for library issues. Council noted that the liaison appointments would be revisited after the November 5, 2002, election.

> UPDATE ON VARIOUS HUMAN RESOURCES ISSUES

Human Resources Director Zodrow reported the status of the recruitment for the Chief of police. This will be a national recruitment and it is anticipated that a new chief could be appointed by January 2003. Chief

Goodpaster will be involved in the recruitment process. City Manager Monahan advised that there is a vacant Captain's position that will not be filled until after the new Chief is appointed.

Ms. Zodrow advised that staff is reviewing the responses to the request for proposals for a labor attorney. This matter will be presented to Council for labor attorney selection at a September Council meeting.

Mr. Monahan outlined the potential of establishing a "vacation donation" program in the City. This would allow employees to donate vacation hours to individuals who were ill or had to be away from work and did not have any paid leave accruals to draw from. Council discussed the importance of employees to use at least two week of vacation a year. Mr. Monahan said that staff would prepare some options for a program and revisit the matter with Council at a future date.

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:26 p.m. to discuss labor relations under ORS 192.660(1)(d). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(3), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

Executive Session adjourned 7:36 p.m.

1. BUSINESS MEETING

- 1.1 Mayor Griffith called the City Council at Local Contract Review Board meeting to order at 7:45 p.m.
- 1.2 Council Present: Mayor Griffith; Councilors Dirksen, Moore, Patton, and Scheckla
- 1.3 Pledge of Allegiance
- 1.4 Council Communications & Liaison Reports: None
- 1.5 Call to Council and Staff for Non-Agenda Items: None

2. VISITOR'S AGENDA (No visitors testified.)

3. PROCLAMATION

- Mayor Griffith proclaimed September 2002 as National Alcohol and Drug Addiction Recovery Month.

4. CONSENT AGENDA:

Councilor Dirksen advised he would like to consider the minutes separately since he did not attend the July Council meetings. He indicated he would abstain from voting.

Councilor Scheckla requested Consent Agenda 4.5e. be pulled from the Consent Agenda for clarification.

Motion by Councilor Patton, seconded by Councilor Scheckla, to approve the Consent Agenda except for items 4.1 and 4.5e., which would be considered separately.

- 4.1 Approve Council Minutes for June 25 and July 9, 16, 23, 2002 (Considered separately, see below.)
- 4.2 Receive and File:
 - a. Council Calendar
 - b. Tentative Agenda
- 4.3 Approve Budget Amendment #1 to the Fiscal Year 2002-03 Budget to Transfer \$10,000 from Parks Capital Fund Capital Improvements to the Public Works Program for Completion of a Street Inventory – Resolution No. 02 - 48
- 4.4 Appoint Sharon Rollins to the Tree Board and Tricia Bull as Alternate to the Tree Board – Resolution No. 02 - 49
- 4.5 Local Contract Review Board:
 - a. Reject Bid Proposals for the Construction of Gaarde Street, Sanitary Sewer Reimbursement District No. 24, and 121st Avenue, Sanitary Sewer Reimbursement District No. 26
 - b. Award Contract for Construction of Carmen Street, Sanitary Sewer Reimbursement District No. 25, to Dunn Construction, Inc.
 - c. Award Contract for the Construction of the Fiscal Year 2002-2003 Pavement Major Maintenance Program to Pro-Teck Construction, Inc.
 - d. Approve Change Order #4 for Cook Park Master Plan Expansion Phase II
 - e. Approve Contract Modification for Architectural/Engineering Design Services with CES/NW for the Cook Park Master Plan Expansion Project (Considered separately, see below.)
 - f. Approve Two-Year Electrical Services Contract Utilizing the Washington County Contract

The motion was approved by a unanimous vote of Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

Motion by Councilor Patton, seconded by Councilor Scheckla to adopt Consent Agenda Item 4.1. The motion was approved by a 4-0-1 vote:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Abstained
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

In response to a question from Councilor Scheckla (relating to Agenda Item 4.5e.), Public Works Director Wegner reported on the status of the Cook Park Master Plan Expansion. The project is about 65 percent complete and is expected to be finished on schedule in September. In response to Councilor Scheckla's request that dumpsters be moved, Mr. Wegner explained why they were placed in their current location. Mayor Griffith commented that the Park "looks great." City Manager Monahan said plans are underway for a ceremony (next spring) dedicating the Nicoli Athletic Fields in recognition of brothers Jim and Dave Nicoli for their efforts on behalf of the community's youth.

Motion by Councilor Dirksen, seconded by Councilor Patton, to approved Consent Agenda Item 4.5e. The motion was approved by a unanimous vote of Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes
Councilor Scheckla	-	Yes

5. UPDATE ON THE TIGARD FESTIVAL OF BALLOONS

Event organizer Bruce Ellis reported that the 2002 Tigard Festival of Balloons was successful. While attendance was down this year from last year, it was a good turnout and the non-profit organizations did well with fundraising activities. He commented that parking also went smoothly despite a number of changes and that a parking shuttle should be seriously considered for next year. This was the last year for television KGW Channel 8 as a sponsor; however, two other television stations have shown interest.

Mr. Ellis said plans are underway for next year's event.

6. DISCUSSION WITH STATE SENATOR GINNY BURDICK AND STATE REPRESENTATIVE MAX WILLIAMS

Senator Ginny Burdick and Representative Williams discussed current legislative issues with the City Council. The Legislature will convene into a fourth special session on Friday, August 16, 2002, to determine whether to override the veto by Governor Kitzhaber placed on two elements of a bipartisan budget package. Representative Williams advised he plans to vote to override the vetoes while Senator Burdick will vote not to override.

Issues discussed included:

- school funding problems and the fact that a budget is not in place with the school year starting in a few weeks
- state economy and the problems experienced in the high tech industry
- land use rules and impacts on development
- local control of school funding lost with Ballot Measure 5 ("equalization"); resulting in downgrades to districts that have historically supported school funding (which has happened to the Tigard-Tualatin School District)
- strong economy of the 90's had shielded the full impact of Ballot Measure 5; now the effects are more evident
- the mandate to fund education must be met
- requested legislators to keep in mind local self-determination (local governments) along with no unfunded mandates by the legislators on local government

7. UPDATE ON THE PROPOSED LOCAL OPTION LEVY FOR WASHINGTON COUNTY COOPERATIVE LIBRARY SERVICES (WCCLS)

Library Director Barnes and WCCLS Manager Eva Calcagno reviewed this agenda item with the City Council. Public libraries in Washington County are experiencing significant increases in use. In May 2002 Eva Calcagno, Manager of WCCLS, outlined to the Washington County Board of Commissioners the projected funding needs for public library services in Washington County over the next five years. Based on that analysis, the Commissioners authorized the placement of a five-year levy for library operations on the November 5, 2002, ballot. The fixed-rate levy would provide approximately 70 percent of operating funds for public libraries throughout Washington County. Ms. Calcagno's presentation was summarized on

PowerPoint slides; a copy of the PowerPoint presentation is on file in the City Recorder's office.

8. PUBLIC HEARING TO CONSIDER A RESOLUTION AUTHORIZING THE SALE OF SURPLUS PROPERTY PURCHASED FOR ACCESS TO THE MENLOR RESERVOIR

- a. Mayor Griffith opened the public hearing.
- b. Assistant Public Works Director Koellermeier presented the agenda item with the staff report reviewed by Property Manager Roy.
- c. Public testimony:
 - Mr. Barry Cook, 15350 SW Fir Tree, Tigard, Oregon, testified as a proponent. Mr. Cook noted his interest in purchasing the property and mentioned the possibility of developing the property as a park. Council members advised Mr. Cook to talk to staff to determine the potential uses of the property since Mr. Cook indicated he had some questions about how the property could be developed.
- d. Staff recommendation was to authorize the sale of the subject parcel of land as proposed in the resolution before the City Council. It was noted that the amount in Section 5 (a) of the resolution should be \$285,000. Also, Section 5 (b) contains a typographical error in that "amont" should be changed to "amount."
- e. Motion by Councilor Moore, seconded by Councilor Patton, to adopt Resolution No. 02-50 as amended to include the minimum purchase price of \$285,000 and to correct a typographical error (as noted above).

RESOLUTION NO. 02-50 – A RESOLUTION AUTHORIZING THE SALE OF SURPLUS PROPERTY PURCHASED FOR ACCESS TO THE MENLOR RESERVOIR.

The motion was approved by a unanimous vote of Council present:

Mayor Griffith	-	Yes
Councilor Dirksen	-	Yes
Councilor Moore	-	Yes
Councilor Patton	-	Yes

Councilor Scheckla - Yes

> STUDY SESSION CONTINUED

Council reconvened into a Study Session in the Red Rock Creek Conference Room to hear an update from staff about the search for a new library architect. Five firms were interviewed. The interview panel has selected two firms as finalists. Staff will now work to select a finalist and then make a recommendation for Council consideration at the August 27, 2002, City Council meeting.

- 9. COUNCIL LIAISON REPORTS: None
- 10. NON AGENDA ITEMS: None
- 11. EXECUTIVE SESSION: Not held
- 12. ADJOURNMENT: 9:32 p.m.

Attest:

Catherine Wheatley, City Recorder

Mayor, City of Tigard

Date: _____

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AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Approve Amendment to Municipal Court Judge's Contract

PREPARED BY: N. Robinson DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

The City and Michael J. O'Brien entered into a two-year contract in 2001 for judicial services. The contract allows for review of compensation in the 2002-2003 fiscal year.

STAFF RECOMMENDATION

Approve the resolution amending Michael O'Brien's 2001-2003 personal services contract.

INFORMATION SUMMARY

In 2001 the City and Michael J. O'Brien entered into a two-year contract for judicial services. Section 2 of the contract states that compensation will be reviewed at the end of 2001-2002 to determine what adjustment is appropriate. The Judge's 2001-2002 compensation of \$25,285.00 was based on a projected hourly rate of \$70.00 per hour. Review of the Judge's timesheets show he worked 434 hours last fiscal year. This lowers his hourly rate to \$58.26.

The increase in the Judge's hours was due to a 20% increase in caseload, including an unusually large volume of code compliance cases, and the time spent coordinating and establishing the juvenile court program. Caseload projections for this fiscal year are slightly higher, so it is logical the court hours will stay in the same range. Given the additional workload and hours it is appropriate to adjust Judge O'Brien's compensation. The amended contract increases the Judge's compensation to \$30,000.00. At \$70.00 per hour, this allows for 428.5 hours of judicial time.

Section 3 "COMPENSATION" of Judge O'Brien's contract is the only section of the contract being amended.

OTHER ALTERNATIVES CONSIDERED

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

ATTACHMENT LIST

Resolution and Amended Contract

FISCAL NOTES

Sufficient funds have been allocated in the 2002-2003 budget.

CITY OF TIGARD, OREGON

RESOLUTION NO. 02-_____

A RESOLUTION OF THE TIGARD CITY COUNCIL APPROVING AN AMENDMENT TO MUNICIPAL COURT JUDGE MICHAEL J. O'BRIEN'S PERSONAL SERVICES CONTRACT

WHEREAS, since 1988 the City has entered into personal services contracts for the municipal judge function; and

WHEREAS, in 2001 Michael J. O'Brien entered into a two-year contract with the City to serve as Municipal Judge; and

WHEREAS, Judge O'Brien's two year contract allows for adjustment in the compensation in the second year of the contract; and

WHEREAS, caseload increased significantly last fiscal year and it is anticipated the caseload will remain at the same level this fiscal year; and

WHEREAS, a monetary adjustment is in order to compensate the Judge fairly;

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The amended personal services contract is entered into by mutual agreement of the parties as set forth in the attached Exhibit "A". This contract will take effect July 1, 2002 and shall repeal and replace all prior verbal and written agreements.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2002.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

RESOLUTION NO. 02- ____

CITY OF TIGARD, OREGON

AMENDED PERSONAL SERVICES CONTRACT

THIS AGREEMENT made and entered into this 1st day of July, 2001 by and between the CITY OF TIGARD, a municipal corporation of the State of Oregon, hereinafter called CITY, and Michael J. O'Brien, hereinafter called CONTRACTOR.

WITNESSETH

WHEREAS, CITY has need for the services of a company with a particular training, ability, knowledge, and experience possessed by CONTRACTOR, and

WHEREAS, City has determined that Michael J. O'Brien is qualified and capable of performing the professional services as CITY does hereinafter require, under those terms and conditions set forth:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **SERVICES TO BE PROVIDED:**

- a) Preside over civil infraction, criminal, traffic, and parking case arraignments, trials, and hearings;
- Oversee the Municipal Court judicial function;
 - Update court orders and rules as needed;
 - Research and additional projects as agreed to by the Contractor and Court Administrator.

2. **EFFECTIVE DATE AND DURATION:**

This Agreement shall become effective upon July 1, 2001 and shall expire, unless otherwise terminated or extended, on June 30, 2003. Compensation will also be reviewed at the end of the 01-02 fiscal year to determine what adjustment is appropriate. All work under this Agreement shall be completed prior to the expiration of this Agreement.

3. **COMPENSATION:**

CITY agrees to pay CONTRACTOR not to exceed ~~\$25,285.00~~ \$30,000.00 for performance of those services described herein, which payment shall be based upon the following applicable terms:

- a. Payment by CITY to CONTRACTOR for performance of services under this Agreement includes all expenses incurred by CONTRACTOR, with the exception of expenses, if any, identified in this Agreement as separately reimbursable.
- b. Payment will be made in 26 bi-weekly installments based on CONTRACTOR's invoice, subject to the approval of the Court Administrator. Payment shall be made only for work actually completed as of the date of the invoice.

- c. Payment by CITY shall release CITY from any further obligation for payment to CONTRACTOR, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- d. It is contemplated by the parties that the court's caseload may increase substantially due to the implementation of photo enforcement, juvenile or other programs. In that event, parties agree to negotiate an appropriate adjustment in CONTRACTOR's method or rate of compensation or both.
- e. CONTRACTOR shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- f. The CITY certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

4. OWNERSHIP OF WORK PRODUCT:

CITY shall be the owner of and shall be entitled to possession of any and all work products of CONTRACTOR which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by CONTRACTOR prior to termination of this Agreement by CONTRACTOR or upon completion of the work pursuant to this Agreement.

5. ASSIGNMENT/DELEGATION:

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If CITY agrees to assignment of tasks to a subcontract, CONTRACTOR shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by CITY of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and CITY.

6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR:

CONTRACTOR certifies that:

- a. CONTRACTOR acknowledges that for all purposes related to this Agreement, CONTRACTOR is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of CITY, shall not be entitled to benefits of any kind to which an employee of CITY is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that CONTRACTOR is found by a court of law or any administrative agency to be an employee of CITY for any purpose, CITY shall be entitled to offset compensation due, or to demand repayment of any amounts paid to CONTRACTOR under the terms of this Agreement, to the full extent of any benefits or other remuneration CONTRACTOR receives (from CITY or third party) as a result of said

finding and to the full extent of any payments that City is required to make (to CONTRACTOR or to a third party) as a result of said finding.

- b. The undersigned CONTRACTOR hereby represents that no employee of the CITY, or any partnership or corporation in which a CITY employee has an interest, has or will receive any remuneration of any description from CONTRACTOR, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

If this payment is to be charged against Federal funds, CONTRACTOR certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.

CONTRACTOR and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.

- c. CONTRACTOR is not an employee or agent of the CITY as those terms are used in ORS 30.265.

7. **INDEMNIFICATION:**

CITY has relied upon the professional ability and training of CONTRACTOR as a material inducement to enter into this Agreement. CONTRACTOR warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by CITY shall not operate as a waiver or release.

City will defend and indemnify CONTRACTOR for all actions taken while CONTRACTOR is performing the responsibilities of municipal court judge as provided in this agreement to the extent of the City's obligation pursuant to ORS.

8. **METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS AND MAKING PAYMENTS.**

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail as follows:

Nadine Robinson, CITY OF TIGARD
Tigard Municipal Court
13125 SW Hall Blvd.
Tigard, Oregon 97223

CONTRACTOR

Michael J. O'Brien

P.O. Box 711

Forest Grove, OR 97116

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

9. **MERGER:**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

10. **PROFESSIONAL SERVICES:**

The CITY requires that services provided pursuant to this agreement shall be provided to the CITY by a CONTRACTOR which does not represent clients on matters contrary to CITY interests. Further, CONTRACTOR shall not engage services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to CITY interests.

Should the CONTRACTOR represent clients on matters contrary to CITY interests or engage the services of an attorney and/or other professional who individually, or through members of his/her same firm, represents clients on matters contrary to CITY interests, CONTRACTOR shall consult with the appropriate CITY representative regarding the conflict.

After such consultation, the CONTRACTOR shall have 30 days to eliminate the conflict to the satisfaction of the CITY. If such conflict is not eliminated within the specified time period, the agreement may be terminated pursuant to Section 13 (b - iii) of this agreement.

11. **TERMINATION WITHOUT CAUSE:**

At any time and without cause, either party shall have the right to terminate this Agreement by giving not less than 30 days notice, in writing, to the other party. If CITY terminates the contract pursuant to this paragraph, it shall pay CONTRACTOR for services rendered to the date of termination.

12. **TERMINATION WITH CAUSE:**

- a. CITY may terminate this Agreement effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by CITY, under any of the following conditions:

- i. If CITY funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds
- ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement.
- iii. If any license or certificate required by law or regulation to be held by CONTRACTOR, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- b. CITY, by written notice of default (including breach of contract) to CONTRACTOR, may terminate the whole or any part of this Agreement:
 - i. If CONTRACTOR fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
 - ii. If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from CITY, fails to correct such failures within ten (10) days or such other period as CITY may authorize.

The rights and remedies of CITY provided in the above clause related to defaults (including breach of contract) by CONTRACTOR shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If CITY terminates this Agreement under paragraph (b), CONTRACTOR shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by CONTRACTOR bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by CITY due to breach of contract by CONTRACTOR. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

13. ACCESS TO RECORDS:

CITY shall have access to such books, documents, papers and records of CONTRACTOR as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

14. **FORCE MAJEURE:**

Neither CITY nor CONTRACTOR shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disenabled, including but not restricted to, an act of God or of a public enemy, civil unrest, volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disenabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

15. **NON-WAIVER:**

The failure of CITY to insist upon or enforce strict performance by CONTRACTOR of any of the terms of this Agreement or to exercise any rights hereunder, should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

16. **NON-DISCRIMINATION:**

CONTRACTOR agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. CONTRACTOR also shall comply with the Americans with Disabilities Act of 1990, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

17. **ERRORS:**

CONTRACTOR shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

18. **EXTRA (CHANGES) WORK:**

Only the Contract Administrator may authorize extra (and/or changes) work. Failure of CONTRACTOR to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and CONTRACTOR thereafter shall be entitled to no compensation whatsoever for the performance of such work.

19. **WARRANTIES:**

All work shall be guaranteed by CONTRACTOR for a period of one year after the date of final acceptance of the work by the owner. CONTRACTOR warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve CONTRACTOR from liability under warranties contained in or implied by this Agreement.

20. ATTORNEY'S FEES:

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

21. GOVERNING LAW:

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

22. COMPLIANCE WITH APPLICABLE LAW:

CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to the work under this Agreement, including those set forth in ORS 279.310 to 279.320.

23. CONFLICT BETWEEN TERMS:

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

24. SEVERABILITY:

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

25. COMPLETE AGREEMENT:

This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. CONTRACTOR, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed by its duly authorized undersigned officer and CONTRACTOR has executed this Agreement on the date hereinabove first written.

CITY OF TIGARD

By: _____
City Manager

CONTRACTOR

By: _____
Contractor/Name/Title

AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE An Ordinance Amending Chapter 12.02 (Sanitary Sewer and Surface Water Management) of the Tigard Municipal Code Making Appropriate Name and Title Changes.

PREPARED BY: Tom Imdieke DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Council amend Tigard Municipal Code (TMC) 12.02 to reflect the name change of Unified Sewerage Agency to Clean Water Services, the title of City Administrator to City Manager, and reference Clean Water Services Ordinances and Resolutions as amended?

STAFF RECOMMENDATION

Amend TMC 12.02 to reflect the recommended changes.

INFORMATION SUMMARY

As part of the continuing effort to update the Tigard Municipal Code, certain name and reference changes are being recommended in the Tigard Municipal Code that applies to the management of sanitary sewer and surface water management. The Unified Sewerage Agency has changed the Agency name to Clean Water Services and the title of City Administrator is no longer used. The title of this position is now City Manager. In addition, the existing code references Clean Water Services Ordinances and Resolutions (Resolution and Orders No. 91-47, Ordinance Nos. 26 through 28, Resolution and Order No. 93-33, and Resolution and Order No. 92-60) as being "in full force and effect" as part of TMC 12.02. However, it does not indicate whether future amendments would apply as well. This change would make future amendments to the Clean Water Services ordinances and resolutions be applicable.

OTHER ALTERNATIVES CONSIDERED

Retain TMC 12.02 as written.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Does not apply.

ATTACHMENT LIST

Ordinance with attachment.

FISCAL NOTES

There is no cost associated with this action.

CITY OF TIGARD, OREGON

ORDINANCE NO. 02_____

AN ORDINANCE AMENDING CHAPTER 12.02 (SANITARY SEWER AND SURFACE WATER MANAGEMENT) OF THE TIGARD MUNICIPAL CODE MAKING APPROPRIATE NAME AND TITLE CHANGES.

WHEREAS, the municipal code references the Unified Sewerage Agency and the name of the Agency was recently changed to Clean Water Services; and

WHEREAS, the municipal code references the position of City Administrator and this position is now titled City Manager; and

WHEREAS, the municipal code references Clean Water Services Ordinances and Resolutions, but does not indicate that the reference applies to any future amendments to the Ordinances or Resolutions.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code 12.02 is amended to reflect the name and title change of Unified Sewerage Agency to Clean Water Services; and City Administrator to City Manager; and Clean Water Services Ordinances and Resolutions are referenced as amended, as shown in Attachment A.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2002.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2002.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

ATTACHMENT A

TIGARD MUNICIPAL CODE

Chapter 12.02 SANITARY SEWER AND SURFACE WATER MANAGEMENT.

Sections:

- 12.02.010 Title.**
12.02.020 Definitions.
12.02.030 Purpose.
**12.02.040 Clean Water Services Unified
Sewerage Agency Of
Washington County Rules
Adopted.**
**12.02.050 Use And Operation; Charges
Imposed For Use; Appeal
Procedures And Enforcement.**
**12.02.060 Charges, Rates And Fees;
Associated Penalties.**
**12.02.070 Pretreatment By Industrial
Users.**
**12.02.080 Temporary Adoption Of
Unified Sewerage Agency
Clean Water Services
Ordinances, Resolutions And
Orders.**
**12.02.090 Immediate Remedial Action
Required.**
12.02.100 Penalty.

12.02.010 Title.

This chapter shall be known as the "sanitary sewer and surface water management chapter" and may also be referred to as "this chapter." (Ord. 94-19)

12.02.020 Definitions.

As used in this chapter:

"Responsible party" means the person responsible for curing or remedying a violation of this chapter, and includes:

(a) The owner of the property, or the owner's manager or agent or other person in

control of the property on behalf of the owner;

(b) The person occupying the property, including lessee, tenant or other person having possession;

(c) The person who is alleged to have committed the acts or omissions, created or allowed the condition to exist, or placed or transported the eroding soil. (Ord. 94-19)

12.02.030 Purpose.

This chapter adopts the ordinance and rules of Clean Water Services the Unified Sewerage Agency that pertain to the operation and use of sanitary and surface water systems and to systems development charges. This chapter does not regulate the collection of user fees. (Ord. 94-19)

**12.02.040 Clean Water Services Unified
Sewerage Agency Of
Washington County Rules
Adopted.**

Clean Water Services Unified Sewerage Agency of Washington County Resolution and Orders No. 91-47 (excluding Chapter 2) as amended, Construction Standards and Regulations pertaining to the sanitary sewerage and storm and surface water management systems are adopted and shall be in full force and effect as part of this code. (Ord. 94-19)

**12.02.050 Use And Operation; Charges
Imposed For Use; Appeal
Procedures And Enforcement.**

Clean Water Services Unified Sewerage Agency Ordinance Nos. 26 through 28 as amended are adopted by reference and shall be in full force and effect as part of this municipal code. (Ord. 94-19)

**12.02.060 Charges, Rates And Fees;
Associated Penalties.**

ATTACHMENT A

TIGARD MUNICIPAL CODE

~~Clean Water Services Unified Sewerage Agency~~
Resolution and Order No. 93-33 as amended is adopted by reference and shall be in full force and effect as part of this municipal code. (Ord. 94-19)

12.02.070 Pretreatment By Industrial Users.

~~Clean Water Services Unified Sewerage Agency~~
Resolution and Order No. 92-60 as amended is adopted by reference and shall be in full force and effect as part of this municipal code. (Ord. 94-19)

12.02.080 Temporary Adoption Of of Clean Water Services Unified Sewerage Agency Ordinances, Resolutions And Orders.

The City ~~Manager Administrator~~, without prior Council approval, may adopt and enforce amendments and revisions to any Ordinances and/or Resolutions and Orders promulgated by ~~the Unified Sewerage Agency Clean Water Services~~ to be in effect for a period of no longer than ninety days from the date of adoption by the ~~Manager Administrator~~. In order for such Ordinances and/or Resolutions and Orders to remain in effect permanently, the City Council must adopt them prior to the expiration date of the temporary adoption by the Manager Administrator. (Ord. 94-19)

12.02.090 Immediate Remedial Action Required.

If the Code Enforcement Officer determines that there has been a violation of this chapter, or that conditions exist that are likely to result in a violation, the officer may require immediate remedial action by the responsible party. If the Code Enforcement Officer is unable to serve a notice of infraction on the responsible party or, if after such service, the responsible party refuses or is unable to remedy the infraction, the City may

proceed to remedy the infraction as provided in Section 1.16.340 of this code. (Ord. 94-19)

12.02.100 Penalty.

(a) Each day that violation of this Chapter is committed or is permitted to continue shall constitute a separate violation.

(b) A finding of a violation of this Chapter and imposition of a fine pursuant to this code shall not relieve the responsible party of the duty to abate the violation. A civil fine imposed pursuant to this Section is in addition to and not in lieu of any other remedies available to the City.

(c) If a provision of this Chapter is violated by a firm or corporation, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this Section.

(d) A finding of a violation of this Chapter shall not result in imprisonment, nor shall a jury trial be available in the adjudication of an allegation of such violation.

(e) A finding of a violation of this Chapter shall be a civil infraction pursuant to Tigard Municipal Code Section 1.16 and may be prosecuted in the Municipal Court of the City. (Ord. 94-19) ■

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE An Ordinance Amending Chapter 12.03 (Billing and Collection of Utility Charges) of the Tigard Municipal Code Clarifying Procedures in the Collection of Utility Charges and Making Appropriate Name and Title Changes.

PREPARED BY: Tom Imdieke DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Council amend Tigard Municipal Code (TMC) 12.03 to reflect current procedures in the collection of utility charges; discontinue after-hour reconnection of service; and reflect the name change of Unified Sewerage Agency to Clean Water Services and the title of City Administrator to City Manager?

STAFF RECOMMENDATION

Amend TMC 12.03 to reflect the recommended changes.

INFORMATION SUMMARY

In addition for the need to update TMC 12.03 to reflect the name change of Unified Sewerage Agency to Clean Water Services and the title change of City Administrator to City Manager, there are clarifications and changes being recommended to the procedures for the billing and collection of utility charges. The recommendation includes the following changes and clarifications:

- 12.03.010 - Adds the word sanitary in front of sewer to clarify reference.
- 12.03.020 - Clarifies the distribution of collections between funds so that it is proportionate among surface water management, sanitary, and water when there are partial payments of a utility bill.
- 12.03.030 (d) - There are several methods for a customer to make a payment now, each should be checked before the cutoff date and time for shutoff.
- 12.03.030 (e) - Clarifies collection of disconnection charge and discontinues the practice of after-hour reconnection. Service would be reinstated if the customer pays any delinquent charges by 5:00 p.m. on the shutoff day.
- 12.03.030 (f) - No change other than clarifying existing procedure.
- 12.03.050 (a) - Clarifies and simplifies language for the returned check charge. No change in fee.
- 12.03.050 (b) - Clarifies that repair and maintenance of water meters is the responsibility of current owner and not initial purchaser.
- 12.03.060 - (a), (b), and (c) - Increases the level of authority to which adjustments can be made to reflect the increase in costs that have occurred since the last revision of the code.

OTHER ALTERNATIVES CONSIDERED

Retain TMC 12.03 as written.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Does not apply.

ATTACHMENT LIST

Ordinance with attachment.

FISCAL NOTES

There is no cost associated with this action.

ORDINANCE NO. 02-_____

AN ORDINANCE AMENDING CHAPTER 12.03 (BILLING AND COLLECTION OF UTILITY CHARGES) OF THE TIGARD MUNICIPAL CODE CLARIFYING PROCEDURES IN THE COLLECTION OF UTILITY CHARGES AND MAKING APPROPRIATE NAME AND TITLE CHANGES.

WHEREAS, the municipal code references the Unified Sewerage Agency and the name of the Agency was recently changed to Clean Water Services; and

WHEREAS, the municipal code references the position of City Administrator and this position is now titled City Manager; and

WHEREAS, the municipal code references procedures that are out-of-date and no longer apply; and

WHEREAS, after-hour reconnection of service due to disconnection of service from delinquent account(s) is no longer recommended due to low frequency and cost .

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: Tigard Municipal Code 12.03 is amended to reflect current procedures in the billing and collection of utility charges; the name and title change of Unified Sewerage Agency to Clean Water Services; and City Administrator to City Manager; and the practice of after-hours reconnection of service is discontinued, as shown in Attachment A.

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this ____ day of _____, 2002.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this ____ day of _____, 2002.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

ATTACHMENT A

TIGARD MUNICIPAL CODE

Chapter 12.03 BILLING AND COLLECTION OF UTILITY CHARGES.

Sections:

- 12.03.010 Definitions.**
- 12.03.020 Rates, Charges, Fees, Penalties,
Collections.**
- 12.03.030 Delinquent Collection
Procedures.**
- 12.03.040 Delinquency Collection
Procedures - Sewer Only
Customers.**
- 12.03.050 Other Fees And Charges.**
- 12.03.060 Utility Charge Adjustments
And Payment Agreements.**
- 12.03.070 Customer Appeal Process.**

12.03.010 Definitions.

(a) Utility Charges.

Any combination of water service charges, sanitary sewer service charges, surface water charges or other fees and charges authorized by the Tigard City Council or the ~~Unified Sewerage Agency~~ Clean Water Services imposed on users of utility services.

(b) Delinquent.

Utility charges not paid by the due date specified on the bill for such charges are considered delinquent.

(c) User.

User shall mean any person who uses property which maintains connection to, discharge to, or otherwise receives services from the City's storm, surface water, sanitary sewer or water systems. The occupant of occupied property is deemed the user. If the property is not occupied, the person who has the right to occupy it shall be deemed the user.

ATTACHMENT A

TIGARD MUNICIPAL CODE

12.03.020 Rates, Charges, Fees, Penalties, Collections.

(a) ~~Unified Sewerage Agency Clean Water Services~~ Resolution and Order number 95-34 and Ordinance Number 26,27,28,and 29 as amended are hereby adopted by reference and shall be in full force and effect as part of this municipal code.

(b) Collections from utility customers will be applied first to interest, penalties or other fees and charges, then proportionately among the rest of charges for services billed or as provided by contract with Clean Water Services. ~~to Surface Water charges, then to Sanitary Sewer charges, and finally to Water charges.~~

(c) All Fees and Charges set forth in this chapter shall be set by resolution by the Tigard City Council.

12.03.030 Delinquent Collection Procedures.

(a) Billing Cycle - Utility charges will be billed to users every other month or as water meters are read. Utility bills will be placed in the United States Mail after the water meter is read or 60 days after the prior billing for non water customers. Such utility bills shall state the amounts and types of charges included in the bill and shall state the due date for the utility charges. Such due date shall not be less than 14 days from the date bills are mailed.

(b) Reminder Notice - For those Utility Charges not paid by the due date, a reminder notice will be sent to the customer. The Notice shall state the amounts and types of charges past due and the date by which such charges must be paid to avoid turn off procedures. The reminder notice shall be placed in the United States Mail not less than 14 days after the original due date on the original bill.

(c) Shut off Notice - For those utility charges not paid by the due date stated on the reminder notice, a shut off notice shall be hung on the front door of the dwelling or place of business at least 48 hours prior to the scheduled actual shut off. The City shall maintain a list of all shut off notices indicating the time and location the notice was placed and by whom. The shut off notice shall state the amounts and types of charges past due and the date and time such charges must be paid to avoid actual shut off of services.

(d) Shutoff Procedure - All accounts determined to be unpaid 48 hours after a shut off notice has been placed on the premises shall be listed and scheduled for shut off. The 48 hours shall be counted on business days only and shall not include Holidays or weekends. On the day scheduled for shutoff, the drop box daily payments shall be opened and the days mail receipts will be reviewed to determine if any applicable payments have been received. The list as amended will then be delivered to the appropriate crew members who will then shut off and lock those meters on the list.

(e) Water Disconnection Charge for Non-Payment ~~Reconnection Charge~~ - A charge will be added to each account that has not been paid prior to the time indicated on the shut off notice. ~~been shut off before water service can be reconnected.~~ The charge covers all costs associated with the delinquent collection process. ~~The charge covers the cost of the delinquent collection process and the cost of the actual turning off and on of the meter.~~ The ~~reconnection~~ charge shall apply even if actual shut off is not performed due to the payment of the past due balance made to the crew member in the field or in the office just prior to shut off. ~~The reconnection charge shall be greater for reconnection requested after normal operating hours and on weekends.~~ Water service will be reconnected the same day as disconnection if the outstanding bill and related charges are paid in

ATTACHMENT A

TIGARD MUNICIPAL CODE

full by 5:00 PM. If payment is not made prior to 5:00 PM the customer's water will not be reconnected until the next regular business day. No water will be reconnected after normal operating hours or on weekends.

(f) Meter Disconnection Charge - A Charge shall be added to each account in which a meter is turned off and locked for non payment if the customer or other party cuts the lock and turns the meter back on without prior approval of the City. ~~In addition to the lock charge, the~~ The meter will be removed from the ground and the water service capped off. Water service shall not be reconnected until the customer has paid the past due utility charges, ~~including the reconnection charge, water disconnection charge, the lock charge and the meter disconnection charge. , and reimbursed the City for the cost of removing and reinstalling the meter on a time and materials basis.~~

(g) Multifamily Housing collection process - When accounts for multifamily housing complexes using master meters rather than individual meters becomes delinquent, the company or individual responsible for payment of the utility bills shall be notified of the past due status of the account in the normal process set forth in section 12.03.030. However, in lieu of the shut off procedure, the responsible party shall be notified in writing that the shutoff procedure will be followed if the delinquent utility charges are not paid within thirty days. Notification will also be made to all tenants known by the City to the extent possible. Accounts not paid within the thirty days will be notified and turned off in accordance with section 12.03.030 (c) and (d).

12.03.040 Delinquency Collection Procedures - Sewer Only Customers.

For utility charges on accounts without water service, delinquent amounts may be collected

using the following collection methods in lieu of the shutoff procedure set forth in 12.03.020 (c), (d), (e):

(a) Delinquent utility charges may be collected through the use of a collection agent. The Finance Director or designee shall have the authority to select a collection agent and sign necessary documents.

(b) Delinquent utility charges may be collected by filing a claim in the appropriate court. The Finance Director shall have the authority to request pursuit of such claims by the City Attorney and shall have the authority to sign and file necessary documents.

(c) Delinquent utility charges may be collected by turning the uncollected balance over to the Washington County Tax Assessor for inclusion on tax bills as allowed by ORS ~~454-225~~ 454.225. This method of collection shall only be used if the user of the services being billed is also the owner of the premises connected to the system. The owners approval must be received in writing allowing the turnover. Accounts being collected in this manner shall be charged a turnover fee and shall be turned over to the Assessor each year by July 15.

(d) Delinquent utility charges may also be collected by disconnecting utility services. Disconnection may involve the physical disconnection of incoming or outgoing utility service pipes and facilities. Disconnection shall only be pursued with the approval of the City ~~Manager~~ Administrator. Actual costs of disconnection shall be calculated and must be paid by the utility service user before reconnection is established.

12.03.050 Other Fees And Charges.

(a) Returned Check Charge - A charge will be added to accounts for any checks returned from

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the bank unpaid for any reason. The charge shall be set by resolution of the City Council. ~~Upon receiving a returned check staff will contact the customer and ask if they would prefer to have the check redeposited, replaced by another check, cash or money order. If the redeposited check is again returned by the bank, an additional charge will be added to the account. The related payment applied to the account will be reversed and the obligation for the utility charges will be reinstated. After a check is returned twice from the bank unpaid for any reason, cash or money order will be required to avoid the turnoff procedures.~~

(b) Repair or replacement of ~~new construction~~ water meters and services - Once installed, ~~new meters placed for new construction will be the responsibility of the meter purchaser.~~ Any ~~any~~ costs associated with the repair or replacement of damaged or missing meters and services will be charged to the ~~original meter purchaser~~ owner of the property. Such costs may include but are not limited to gaskets, meter boxes, lid inserts, meters, pressure regulator valves, ~~and~~ related labor, equipment, vehicles, and materials.

12.03.060 **Utility Charge Adjustments And Payment Agreements.**

Errors in billing or collection shall be corrected in a timely manner by the City. Resulting credits on accounts or refunds shall be made as expeditiously as possible. Disputed billings or other collection transactions shall be dealt with as follows:

In recognition of the ~~existence of~~ need for exceptions ~~to normal circumstances~~ in some cases, ~~Authority~~ authority is granted as follows for adjustments to utility charges and to the implementation of payment agreements. All waivers granted under 12.03.060 (a) (b) shall be reported to the Intergovernmental Water Board each month upon their request.

(a) The Finance Director or designee shall have the authority to waive utility charges up to \$250.00 ~~\$50.00~~. Such waiver may be made based upon a written request from the customer and for good cause. Good cause may include but is not limited to correction of user or account information, failure of the City to send a bill, demonstrated failure of a user to receive a bill, correction of measurement of either fixture units or equivalent service units and adjustments to the time in which requester became the user. Waivers may include returned check charges, disconnection ~~reconnection~~ charges or utility charges. ~~The Finance Director shall make a quarterly report to the City Administrator indicating all such waivers giving the amounts and reasons amounts were waived.~~

(b) The City Manager ~~Administrator~~ or designee shall have the authority to waive utility charges up to \$500.00 ~~\$250.00~~. Such waiver must be made based upon a written request from the customer and for good cause as defined in subsection (a). ~~Good cause may include but is not limited to correction of user or account information, failure of the City to send a bill, demonstrated failure of a user to receive a bill, correction of measurement of either fixture units or equivalent service units and adjustments to the time in which requester became the user.~~ The City Manager ~~Administrator~~ shall receive a written report of findings from staff and then weigh the evidence presented by the customer and the staff before making any such waiver.

(c) Any requests to waive utility charges above \$500.00 ~~\$250.00~~ shall be made in writing to the Intergovernmental Water Board. The Finance Director or designee may schedule the request on the next available agenda and so notify the customer at least one week in advance. All materials related to the request shall be made available to the Board and the customer may be allowed to make a presentation to the Board at the

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discretion of the Board Chairman.

(d) The ~~Finance Director~~ City may enter into a payment agreement with a customer to facilitate the payment of delinquent utility charges. Such agreements shall not exceed the term of three years, current charges must be paid when due, and the agreement must be signed by both parties and must be a legally binding agreement. Breach of such an agreement by the customer shall result in further collection efforts. Payment agreements for amounts over \$10,000:~~00~~ must be approved by the Tigard City Council.

12.03.070 Customer Appeal Process.

(a) Customers shall have the right to appeal billing decisions made by staff. If a customer is not satisfied with a decision, the customer may appeal to the Finance Director within fourteen days of the decision in writing explaining the issue and justification for the customers position. Finance Director decisions may be appealed to the City Manager ~~Administrator~~ within fourteen days of the decision in a similar fashion. City Manager ~~Administrator~~ decisions may be appealed within fourteen days of the decision to the Intergovernmental Water Board. Board decisions are considered final. (Ord. 96-02). ■

AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE An ordinance granting to Time Warner Telecom of Oregon LLC a franchise to conduct a telecommunications business in the City of Tigard, Oregon, including the right to place poles, wires, and other appliances for telecommunication purposes in the public rights-of-way; and authorizing the Mayor to sign this agreement.

PREPARED BY: Craig Prosser DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the City of Tigard grant a telecommunications franchise to Time Warner Telecom of Oregon LLC?

STAFF RECOMMENDATION

Approve the franchise

INFORMATION SUMMARY

Time Warner Telecommunications of Oregon LLC has requested a franchise to provide telecommunications services within the City of Tigard. Time Warner has paid the telecommunications franchise application fee as required by TMC 5.14.

TMC 5.14 establishes the procedure, terms, and conditions for granting new telecommunications franchises. This chapter establishes a standard franchise agreement, which may be approved by the Council by resolution if agreed to by the applicant. If the applicant requests substantive changes to that standard agreement, the franchise must be approved by ordinance.

Time Warner reviewed the City's standard franchise agreement, and accepted most of the terms and conditions, but also requested a few semantic and style changes and a few substantive changes. The substantive changes to the standard agreement include:

1. Section 2 Franchise Fee – Time Warner asked to prorate its first six-month minimum payment. The agreement establishes a franchise fee of \$7,500 per year or 5% of gross revenue (which ever is greater) payable semi-annually. If approved by Council, this agreement will take effect on Sept. 26, 2002, leaving approximately 3 months remaining in the calendar year. Time Warner asked to pay for 3 months of the year, rather than a full 6 months.
2. Section 4 Transfer or Assignment – Time Warner asked for language clarifying that it could transfer this franchise to a parent, affiliate, or subsidiary company and that it can assign the franchise to a commercial lending institution as collateral for a financing transaction without prior City approval.

3. Section 6 Service to City – The City’s standard agreement provides for the franchisee to charge the City its most favorable rate offered in Oregon for a similar volume of service should the City desire service from the franchisee. Time Warner requested a change to the most favorable rates in the Portland local calling area for similar services and volumes.
4. Section 8 Defense, Indemnity and Hold Harmless – Time Warner requested additional language clarifying its responsibility to indemnify and hold the city harmless from allegations of negligence, carelessness, wrongful acts, failure to act, or other misconduct.
5. Section 12 Audit – Time Warner requested additional language clarifying its ability to request confidential treatment under Oregon law of any information it submits in conjunction with an audit of its franchise fee paid.
6. Section 17 As Built Drawings – Time Warner requested a change in language so that it has to submit as-built drawings in each year that it changes location of facilities rather than each year.
7. Section 23 Equal Terms – Time Warner requested the addition of this section to allow it to request modification of this agreement if the City should offer better terms to a similarly situated provider at any time during the life of this agreement.
8. Section 24 Natural Disaster – Time Warner requested the addition of this section to deal with the impacts of natural disasters and acts of God on its ability to perform under this franchise.
9. Section 25 Compliance with Laws and Regulations – Time Warner requested the addition of this section to allow either the City or Time Warner to re-open the terms of this franchise to conform to any changes in state or federal laws, standards, or regulations.
10. Section 26 Severability – Time Warner requested the addition of this section to allow either the City or Time Warner to renegotiate this agreement if any one section is held to be invalid or unconstitutional by a court of law.
11. Section 27 Captions – Time Warner requested the addition of this section to clarify the use of section captions in interpreting the meaning of the sections of this agreement.
12. Section 28 Separate Counterparts – Time Warner requested the addition of this section to allow this agreement to be signed in separate counterparts.

The City Attorney has reviewed and approved all of these requested changes.

This agreement will not go into effect until it has been signed by both parties and until September 26, 2002. Time Warner is interested in beginning construction on its system as soon as possible. The City Attorney and staff have informed Time Warner that they may apply for all necessary permits after this agreement is approved by Council but before the effective date of the ordinance to start the permitting process. Staff will not, however, issue any permits until after this agreement has been signed and until after the effective date of this ordinance.

OTHER ALTERNATIVES CONSIDERED

Attempt to renegotiate specific provisions of the franchise agreement. However, under the Telecommunications Act of 1996, cities may not set up requirements that create a barrier to entry into the local telecommunications market.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

NA

ATTACHMENT LIST

Ordinance, including Attachment A to the Ordinance

FISCAL NOTES

Time Warner telecommunications of Oregon has agreed to pay the standard City of Tigard Telecommunications Franchise fee of \$7,500 per year (except in the first year of operation) or 5% of gross revenues, whichever is greater.

CITY OF TIGARD, OREGON

ORDINANCE NO. 02-__

AN ORDINANCE GRANTING TO TIME WARNER TELECOM OF OREGON LLC A FRANCHISE TO CONDUCT A TELECOMMUNICATIONS BUSINESS IN THE CITY OF TIGARD, OREGON, INCLUDING THE RIGHT TO PLACE POLES, WIRES, AND OTHER APPLIANCES FOR TELECOMMUNICATION PURPOSES IN THE PUBLIC RIGHTS-OF-WAY; AND AUTHORIZING THE MAYOR TO SIGN THIS AGREEMENT.

WHEREAS, The ten-year franchise for the communication facilities and services provided by Time Warner Telecom of Oregon LLC, described in the title of this ordinance is now before the City Council for approval. The Council believes that the franchise should be approved under the terms and conditions set forth in Exhibit A, attached hereto, and by this reference made a part hereof.

THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1. The terms and conditions of the attached franchise agreement, Exhibit A, are hereby approved and adopted as part of this ordinance as if specifically set forth.

SECTION 2. The Mayor is authorized and directed to sign the attached agreement on behalf of the Council.

SECTION 3. The City Council determines that the fee imposed by this franchise is not a tax subject to the property tax limitations of Article XI, Section 11 (b) of the Oregon Constitution.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2002.

Catherine Wheatley, City Recorder

APPROVED: This _____ day of _____, 2002.

James Griffith, Mayor

Approved as to form:

City Attorney

Date

ORDINANCE No. 02-__

Exhibit A, Page 1

EXHIBIT "A"

TELECOMMUNICATIONS FRANCHISE AGREEMENT

A nonexclusive, ten (10) year franchise between the City of Tigard and Time Warner Telecom of Oregon LLC to conduct a telecommunication business within the City of Tigard.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the sufficiency of which is acknowledged, the parties hereto agree as follows:

SECTION 1. GRANT AND ACCEPTANCE OF FRANCHISE

The City of Tigard, OR (herein referred to as “City”) grants to Time Warner Telecom of Oregon LLC (herein referred to as “Grantee”), subject to applicable City codes, ordinances, regulations, and the terms of this agreement, the privilege to use the rights of way of the City of Tigard for a telecommunications business for the purpose of furnishing telecommunications services as defined in State and Federal Law. This grant includes the right to erect, construct, place, replace, reconstruct, lay, maintain, and operate poles, wires, switching equipment, amplifying equipment, fixtures, facilities, appliances, structures and other devices including, but not limited to, electronic, optical and mechanical devices customarily associated with Grantee’s function and purpose of serving as a telecommunications utility in, on, upon, above, beneath, within, along, across, under and over the City’s rights of way.

This franchise is granted solely for the privilege of providing telecommunications services as defined by State and Federal Law. This franchise does not include the right to conduct the business of providing a “cable system” as defined in applicable law. Should the Grantee desire to provide a cable system within the City, it must comply with the City’s regulations relating to cable communications in force at that time.

Grantee accepts the grant of the franchise and agrees to comply with Tigard Municipal Code Chapter 5.14, the resolution granting the franchise, and all other applicable laws, ordinances, and regulations.

SECTION 2. FRANCHISE FEE

Grantee shall pay an annual franchise fee in the amount of \$7,500 or the amount established under the following subsection, whichever is greater:

- a. Five percent (5%) of gross revenues generated within the City. Gross revenue generated within the City includes monthly service charges paid by customers within the City, the full amount of charges for separately charged transmissions originating and received within the City, half the

ORDINANCE No. 02-____

Exhibit A, Page 1

amount of separately charged transmissions that either originate or are received within the City, but are received or originate outside the City, any amounts received for rental of facilities within the right of way, and any other amounts received by the franchisee for services (including resale services) provided by the franchisee that use facilities within the right of way.

In the event that a transmission is sent or received by a mobile device (e.g., cellular phone), the mobile device shall be deemed to be in the jurisdiction where the bills for use of the device are sent, regardless of actual location at the time of the transmission.

- b. The franchise fee is compensation for use of rights of way and reimbursement of the City's cost of administering the program. The franchise fee is separate and distinct from any other legally authorized federal, state or local taxes or fees.
- c. The franchise fee is not subject to the property tax limitations of Article XI, sections 11(b) and 11(19) of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership and is not a new or increased fee.
- d. The franchise fee shall be payable semi-annually on or before March 15 for the six month period ended December 31, and September 15 for the six month period ended June 30. The Grantee shall pay interest at the rate of one percent (1%) per month for any payment made after the due date. However, the first six month payment shall be prorated based on the effective date of this franchise.

SECTION 3. TERM

The rights, privileges and franchise hereby granted shall commence when signed by both parties and continue to be in full force for a period of ten (10) years from the date this agreement becomes effective. Grantee may renew its franchise as provided by Tigard Municipal Code. This agreement shall be subject to any and all State or Federal laws and regulations.

SECTION 4. TRANSFER OR ASSIGNMENT

Grantee shall not transfer or assign this franchise to any other party without the express written consent of the City, except that no prior written consent shall be required (1) if the transfer or assignment is to a parent, affiliate or subsidiary of Grantee or (2) if the assignment is to a commercial lending institution solely for security purposes in connection with a financing transaction and Grantee continues to be responsible for compliance with the Agreement. A transfer of ownership or control of a majority interest in the Grantee shall constitute a transfer of the franchise.

If the franchise is assigned or transferred, the assignee or transferee shall become responsible for all facilities of the existing transferee at the time of transfer. The City shall allow the transfer or assignment

if a transfer fee in an amount determined by resolution has been paid, the transferee or assignee meets all requirements imposed on franchisees, and the transferee or assignee agrees in writing to be bound by the franchise agreement and all applicable City Code and regulations as they exist at the time of transfer. A transfer or assignment of a franchise does not extend the term of the franchise.

SECTION 5. LEASING OF FACILITIES

Grantee may lease capacity or bandwidth in its facilities within City rights of way only if it provides City with the name and business address of lessee.

SECTION 6. SERVICE TO CITY

If City contracts for the use of Grantee's services, Grantee agrees to charge its most favorable rate offered to customers in the Portland local calling area buying similar services and volumes only in Oregon under the same terms and conditions.

SECTION 7. INSURANCE

- a. Grantee shall provide and keep in force public liability insurance, with a thirty (30) day cancellation clause, with a combined single limit of three (3) million dollars, which shall be evidenced by a certificate of insurance filed with the City Recorder at City of Tigard, 13125 SW Hall Blvd., Tigard, OR 97223. The City shall be named as an additional insured on the policy to the extent of Grantee's insurable indemnity obligations under this franchise agreement. The insurance shall indemnify and hold the City harmless against liability or damage which may arise or occur from any claim resulting from the Grantee's operation under this agreement. In addition, the policy shall provide for the defense of the City for any such claims.
- b. In lieu of the third-party public liability insurance policy required by subsection a of this section, Grantee may provide and keep in force self-insurance in an amount at least equal to the limits identified in the preceding paragraph. The Grantee hereby further agrees to cover the City as a co-insured under this self-insurance program. The Grantee shall indemnify, defend and hold harmless the City through its self-insurance program against any and all claims, actions and suits (including attorney fees and costs) arising out of or resulting from Grantee's activities. The Grantee shall provide proof of self-insurance to the City before this agreement shall take effect.

SECTION 8. DEFENSE, INDEMNITY AND HOLD HARMLESS

Grantee shall defend, indemnify and hold harmless the City and its officers, employees, agents and representatives from and against any and all damages, losses, and expenses, including reasonable attorney fees and costs of suit or defense, arising out of or resulting from the negligent, careless, or

wrongful acts, omissions, failure to act or other misconduct of the Grantee or its affiliates, officers, employees, agents, contractors, subcontractors or lessees in the construction, operation, maintenance, repair, or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed, or prohibited by this agreement or by Tigard Municipal Code Chapter 5.14.

Grantee shall defend at its own cost the City and its officers, employees, agents and representatives from and against any and all claims alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act or other misconduct of the Grantee or its affiliates, officers, employees, agents, contractors, subcontractors or lessees in the construction, operation, maintenance, repair, or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed, or prohibited by this agreement or by Tigard Municipal Code Chapter 5.14.

SECTION 9. DAMAGE TO GRANTEE’S FACILITIES

The City shall not be liable for any damage to or loss of any telecommunications facility as a result or in connection with any work by or for the City or for any consequential damages or losses resulting from such work unless the damage or loss is the direct and proximate result of willful, intentionally tortious, gross negligence, or malicious acts by the City.

SECTION 10. PERFORMANCE SURETY

The Grantee shall provide a performance bond reasonably acceptable to the City as security for the full and complete performance of this agreement, to cover any costs, expenses, damages or loss the City pays or incurs because of any failure attributable of the Grantee to comply with the codes, ordinances, rules, regulations or permits of the City. The bond shall be in an amount sufficient to pay for the removal of all of Grantee’s facilities within the right of way.

Prior to installing new telecommunications facilities in any right of way, the Grantee shall provide a performance bond or other surety acceptable to the City in an amount equal to at least 110% of the estimated costs of construction of the new facilities within the rights of way. The surety shall remain in force until 60 days after substantial completion, including restoration of public rights of way and other property, as determined by the City. The surety shall guarantee timely completion, construction in compliance with applicable plans, permits, codes and standards, proper location, restoration of public rights of way and other property, and timely payment and satisfaction of all claims, demands or liens for labor, material or services.

SECTION 11. NOTICE

All notices and approvals required under this agreement shall be in writing. The Grantee shall provide the City with the name, position and phone number of Grantee staff that can be contacted for administration of this Agreement and for contact with construction-related questions and comments.

Such notices and approval shall be directed to the City as follows:

City Engineer, City of Tigard
13125 SW Hall Blvd.
Tigard, OR. 97223
(503) 639-4171

and to Grantee as follows:

Time Warner Telecom of Oregon LLC
Attn: Tina Davis, V.P. & Deputy General Counsel
10475 Park Meadows Drive
Littleton, CO 80124

With a Copy to:

Time Warner Telecom of Oregon LLC
Brian Thomas, V.P. Regulatory – North West
520 Southwest Sixth Avenue, Suite 300
Portland, OR 97204

SECTION 12. AUDIT

- a. Within ten (10) business days of a written request from the City, Grantee shall furnish the City:
 1. Information sufficient to demonstrate that Grantee is in compliance with this agreement and Tigard Municipal Code Chapter 5.14.
 2. Access to all books, records, maps and other documents maintained by Grantee with respect to its facilities in City rights of way so that the City may perform an audit. Grantee shall provide access to City within the Portland, Oregon metropolitan area.
- b. If the City's audit shows that Grantee has underpaid the franchisee fee by five percent (5%) or more in any one year, Grantee shall reimburse City for the cost of the audit, and in addition to paying any underpayment, pay interest specified in Tigard Municipal Code Section 5.14.080(e) from the original due date. All payments shall be made within sixty (60) days of delivery to Grantee of the audit results.

- c. Grantee may designate portions of the information provided to the City under this section as confidential. The City shall maintain the confidentiality of such information to the extent permitted by Oregon Public Records Law (ORS 192.410 to 192.505). Confidentiality may be claimed under ORS 192.501(2) (trade secrets), ORS 192.501(19) (audits of telecommunications carriers), or other applicable exemptions from Public Records Law.

SECTION 13.LOCATION OF FACILITIES

Grantee agrees to locate telecommunications facilities underground when the City requests in writing that the specific facility be placed underground. The City agrees that it will not require that any above ground facilities be placed underground unless all other telecommunications facilities within the same stretch of right of way are also required to be placed underground.

SECTION 14.INTERFERENCE WITH RIGHTS OF WAY

Grantee shall locate and maintain all its telecommunications facilities so that they do not unreasonably interfere with the use of rights of way. Grantee agrees to complete all construction in rights of way so as to minimize disruption of the right of way and utility service and without interfering with other public and private property. Grantee agrees that it will not conduct any work in a right of way during a moratorium on right of way work, except as permitted by the City in case of an emergency.

SECTION 15.CONSTRUCTION PERMIT

Grantee shall obtain a construction permit prior to engaging in any construction or installation activities within a City right of way and shall comply with all permit terms.

SECTION 16.FACILITIES

Grantee shall install, construct, operate and maintain its telecommunications facilities in City rights of way in accordance with all applicable federal, state and local statutes, codes, ordinances, rules and regulations. Grantee agrees not to place any of its telecommunications facilities on or in any City pole, conduit, box or similar equipment without a separate agreement from the City authorizing such placement.

SECTION 17.AS BUILT DRAWINGS

Grantee shall provide City with two complete sets of engineered plans in a form reasonably acceptable to the City showing the location of all its telecommunications facilities within rights of way after initial

construction of its system and shall provide the City two updated complete sets of as-built plans at the end of each year whenever any change in location of Grantee's facilities occurs.

SECTION 18. RESTORATION OF RIGHTS OF WAY

When Grantee, or those acting on its behalf, engages in work in or affecting a right of way or City property, the Grantee shall promptly, at its own expense, restore the right of way or other City property, to good order and condition unless otherwise directed by the City.

If weather or other conditions do not permit the complete restoration required by this section, the Grantee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the Grantee's sole expense and the Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

If Grantee fails to restore rights of way or property to good order and condition, the City shall give Grantee written notice and provide the Grantee a reasonable period of time not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the Grantee fails to restore the rights of way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the Grantee.

Grantee, or another person acting on its behalf, shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

All such work shall be done in strict compliance with the rules, regulations, ordinances or orders which may be adopted from time to time during the continuance of this franchise by the City Council or City Engineer or as may be otherwise provided by law. The City shall have the right to fix a reasonable time within which such repairs and restoration shall be completed and upon failure of such repairs and restoration being made by Grantee, City shall cause such repairs to be made at the expense of Grantee.

SECTION 19. CONSTRUCTION COORDINATION

Grantee agrees to make a good faith effort to coordinate construction schedules with the City and other uses of City rights of way. Grantee's coordination efforts shall include, but not be limited to:

- a. Providing a work schedule to the City prior to January 1 for known construction work affecting City right of way for the year starting that date.

- b. Meeting with the City once per calendar year to schedule and coordinate work.
- c. Obeying orders of the City Engineer or designee relating to the coordination of construction projects.

SECTION 20. RELOCATION OR REMOVAL

Grantee shall temporarily or permanently remove, relocate, change or alter the position of any telecommunications facility within the public right of way when requested to do so in writing by the City.

The removal, relocation, change or alteration shall be at Grantee's expense when the removal, relocation, change or alteration is needed because of construction, repair, maintenance, or installation of public improvements or other operations of the City within the right of way or is otherwise in the public interest. In the event that the removal, relocation, change or alteration is needed to accommodate private development or other private use of the right of way, the developer or other private party requiring the action shall be responsible for the cost of removal, relocation, change or alteration. The Grantee shall be under no obligation to remove, relocate, change or alter its facilities to benefit a private party unless and until the private party pays a deposit for costs to the Grantee. The City shall specify in the written notice the amount of time for removal, relocation, change or alteration. In the event of emergency, the Grantee shall take action as needed to resolve the emergency, and the City may use any form of communication to direct the Grantee to take actions in an emergency to protect the public safety, health and welfare.

SECTION 21. DISCONTINUANCE OR REMOVAL OF TELECOMMUNICATIONS FACILITIES

When Grantee plans to discontinue any telecommunications facility, the Grantee shall submit a plan for discontinuance to the City. The plan may provide for removal of discontinued facilities or for abandonment in place. The City Engineer shall review the plan and issue a written order to Grantee specifying which facilities are to be removed and which may be abandoned in place. The order shall establish a schedule for removal. The Grantee shall remain responsible for all facilities until they are removed.

Within thirty (30) days written notice to do so from the City, the Grantee shall, at its own expense, remove unauthorized facilities and restore the right of way. A telecommunications facility that the City Engineer has approved to be abandoned in place is not an unauthorized telecommunications facility. A telecommunications system or facility is unauthorized under the following circumstances:

- a. The telecommunications system or facility is outside the scope of authority granted by this agreement.

- b. The system or facility has been abandoned and the City Engineer has not authorized abandonment in place.
- c. The facility is improperly constructed or installed or in a location not permitted by this agreement.

If Grantee fails to remove any facility when required to do so under this agreement, the City may remove the facility and the Grantee shall reimburse the City for the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement.

SECTION 22. TERMINATION

The City may terminate this agreement for the reasons stated in Tigard Municipal Code Section 5.14.500, applying the standards set forth in Tigard Municipal Code Section 5.14.510. Prior to termination, the City shall provide the notice and opportunity to cure provided for in Tigard Municipal Code Section 5.14.520.

SECTION 23. EQUAL TERMS

If at any time subsequent to the execution of this agreement, any other similarly situated provider of similar telecommunications services shall enter into an agreement with the City governing the use of public rights of way whose terms and conditions as a whole are more favorable to that provider than are the terms of this agreement to Grantee, then this agreement may, upon request of Grantee, be modified such that the terms and conditions as a whole as applicable to Grantee are just as favorable as the terms and conditions of the other agreement as a whole are to the other telecommunications service provider.

SECTION 24. NATURAL DISASTER

For purposes of this subsection, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto. If the Grantee is wholly or partially unable to carry out its obligations under this agreement as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this agreement shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this agreement.

SECTION 25. COMPLIANCE WITH LAWS AND REGULATIONS

Both parties reserve the right to seek a change, amendment, or modification to this agreement to conform to any applicable state or federal judicial or administrative ruling, state or federal statute, and or state or federal codes, standards, or regulations as may hereafter be enacted, adopted or promulgated.

SECTION 26. SEVERABILITY

If any section, sentence, clause or phrase of this agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, the parties shall negotiate changes to the agreement to the extent necessary to make it valid and enforceable.

SECTION 27. CAPTIONS

Captions are intended to facilitate reading and reference to the sections of this agreement. Captions may be used as a reference aid in interpreting the agreement but shall not be interpreted to be inconsistent with or to alter the written terms stated in the text.

SECTION 28. SEPARATE COUNTERPARTS

This agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original. Such counterparts shall, together, constitute and be one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this agreement this ____ day of _____, 2002.

CITY OF TIGARD
OREGON, a Municipal Corporation

By: _____

Mayor James Griffith

ATTEST: _____

Catherine Wheatley
City Recorder

Date: _____

GRANTEE:

TIME WARNER TELECOM OF OREGON LLC

By: Time Warner Telecom Holdings Inc.,
Its sole member

By: _____

Title: _____

Date: _____

AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution Amending Resolution 02-06 by Amending Exhibit A Thereto and Increasing, Adding, and Eliminating Certain Water Charges

PREPARED BY: Tom Imdieke/Dennis Koellermeier DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Shall the City Council amend, add and eliminate certain water charges in the Fees and Charges Schedule to reflect current practices and recoup actual costs?

STAFF RECOMMENDATION

Amend Fees and Charges Schedule to reflect the recommended changes.

INFORMATION SUMMARY

Chapter 12.03 and 12.10 of the Tigard Municipal Code provides that fees and charges for water and related services be established by Resolution of the City Council.

During the updating of TMC 12.03 and 12.10, Public Works and Finance staff reviewed current practices and associated charges. Staff determined that the charges for temporary hydrant usage and meter disconnection were not recouping the City's costs associated with providing these services. Also, the fees for Meter Out-of-Order Test and Water Main Extensions were not included in the Fees and Charges Schedule (Resolution No. 02-06). The current practice of after-hour reconnection of service due to disconnection of service from delinquent account(s) is being discontinued due to low usage and high cost. The fee associated with this service needs to be removed from the Fees and Charges Schedule.

OTHER ALTERNATIVES CONSIDERED

Retain Fees and Charges Schedule as written.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Does not apply.

ATTACHMENT LIST

Resolution
Exhibit A attachment

FISCAL NOTES

There is no cost associated with this action.

CITY OF TIGARD, OREGON

RESOLUTION NO. 02-_____

A RESOLUTION AMENDING RESOLUTION 02-06 BY AMENDING EXHIBIT A THERETO AND INCREASING, ADDING, AND ELIMINATING CERTAIN WATER CHARGES.

WHEREAS, Tigard Municipal Code 12.03 and 12.10 provides that fees and charges for water and water-related services shall be established by resolution of the City Council; and

WHEREAS, the current water charges are those set by Resolution No. 02-06 as shown in Exhibit A to that resolution; and

WHEREAS, the City Council finds that existing charges for temporary hydrant usage, and meter disconnection are not recouping the City's costs associated with providing these services; and

WHEREAS, the current fees for the Meter Out-of-Order Test and Water Main Extension were not included in Resolution No. 02-06; and

WHEREAS, the City Council has approved discontinuation of the after-hour reconnection of service due to disconnection of service from delinquent account(s); and

WHEREAS, the City finds that the increased and added fees as shown in Exhibit A are set at a level designed to recover the City's costs without creating surplus revenues.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION Resolution 02-06 is hereby amended by amending Exhibit A to that resolution to read as shown in Exhibit A hereto and incorporated by this reference.

SECTION This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2002.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

**City of Tigard
Fees and Charges Schedule**

EXHIBIT A

Department	Revenue Source	Fee or Charge	Effective Date
PUBLIC WORKS - WATER			
	<i>Booster Pump Charge</i>	\$3.54/bimonthly	2/27/01
		3.89/bimonthly	10/01/2002 - 09/30/2003
		4.12/bimonthly	10/01/2003 - 09/30/2004
		4.37/bimonthly	10/1/04
	<i>Customer Charge</i>	4.00/bimonthly	2/27/01
	(Basic fee charged to customers to have the City deliver water.)	4.40/bimonthly	10/01/2002 - 09/30/2003
		4.66/bimonthly	10/01/2003 - 09/30/2004
		4.94/bimonthly	10/1/04
	<i>Fire Hydrant Usage - Temporary</i>		
	<u>5/8 x 3/4" hydrant meter deposit*</u>	<u>60.00</u>	<u>9/1/02</u>
	<u>3" hydrant meter deposit*</u>	<u>650.00</u>	<u>9/1/02</u>
	<u>3/4" double check valve deposit*</u>	<u>75.00</u>	<u>9/1/02</u>
	<u>2" double check valve deposit*</u>	<u>100.00</u>	<u>9/1/02</u>
	*Deposit is refundable if returned in good condition		
	Hook-up service	50.00	2/27/01
	Continued use	50.00/month	2/27/01
	Consumption	1.81/cc² used	2/27/04
	<u>Current irrigation water usage</u>		<u>9/1/02</u>
	<u>rate per 100 cubic feet of water used</u>		
	<i>Fire Rates (Sprinklers)</i>		2/27/01
	6" or smaller	17.00/month	
	8" or larger	22.50/month	
	<i>Fire Service Connection</i>	1,400.00 + 12% fee based on construction costs.	2/27/01
	<i>Meter Disconnection</i>	Actual labor and material <u>costs + 10%</u>	4/23/96 <u>9/1/02</u>
	<i>Meter Installation Fees</i>		
	5/8" x 3/4" Meter	325.00	2/27/01
	1" Meter	500.00	
	1 1/2" Meter	850.00	
	2" Meter	1,000.00	
	3" or more Meter	Actual Cost	5/23/00

*Underlined fees are new and strikethrough are old.

**City of Tigard
Fees and Charges Schedule**

EXHIBIT A

Department	Revenue Source	Fee or Charge	Effective Date
	<u>Meter Out-of-Order Test</u>	<u>Meter calibration cost + actual labor and material costs + 10%</u>	<u>9/1/02</u>
	Sanitary Sewer Service (City receives 21.4% of fees collected)		6/6/00
	Base Charge	15.58/dwelling unit/month	
	Use Charge	1.08/100 cubic feet/month for individual customer winter average	
	Storm and Surface Water (City receives 75% of fees collected)		6/6/00
	Service Charge	4.00/ESU/month	
	Water Disconnection Charge for Non-payment		2/27/01
	During business hours	50.00	
	After hours, holidays and weekends	400.00	
	Water Line Construction - New Development	12% of Actual Cost	2/27/01
	<u>Water Main Extension</u>		
	<u>Designed and installed by others</u>	<u>12% of Actual Cost</u>	<u>9/1/02</u>
	Water Usage Charges		
	Residential	1.56/100 cubic feet of water	2/27/01
		1.71/100 cubic feet of water	10/01/2002 - 09/30/2003
		1.81/100 cubic feet of water	10/01/2003 - 09/30/2004
		1.92/100 cubic feet of water	10/1/04
	Multi-Family	1.54/100 cubic feet of water	2/27/01
		1.69/100 cubic feet of water	10/01/2002 - 09/30/2003
		1.79/100 cubic feet of water	10/01/2003 - 09/30/2004
		1.90/100 cubic feet of water	10/1/04
	Commercial	1.81/100 cubic feet of water	2/27/01
		1.99/100 cubic feet of water	10/01/2002 - 09/30/2003
		2.11/100 cubic feet of water	10/01/2003 - 09/30/2004
		2.24/100 cubic feet of water	10/1/04

*Underlined fees are new and strikethrough are old.

**City of Tigard
Fees and Charges Schedule**

EXHIBIT A

<u>Department</u>	<u>Revenue Source</u>	<u>Fee or Charge</u>	<u>Effective Date</u>
	Industrial	1.50/100 cubic feet of water	2/27/01
		1.65/100 cubic feet of water	10/01/2002 - 09/30/2003
		1.75/100 cubic feet of water	10/01/2003 - 09/30/2004
		1.86/100 cubic feet of water	10/1/04
	Irrigation	1.93/100 cubic feet of water	2/27/01
		2.12/100 cubic feet of water	10/01/2002 - 09/30/2003
		2.25/100 cubic feet of water	10/01/2003 - 09/30/2004
		2.39/100 cubic feet of water	10/1/04

*Underlined fees are new and strikethrough are old.

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Amend Tigard Municipal Code 12.10 - Water System Rules & Regulations

PREPARED BY: Dennis Koellermeier DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Shall the Council amend Tigard Municipal Code (TMC) 12.10 to update several provisions of water service to align municipal code requirements with current utility service practices and other TMC provisions.

STAFF RECOMMENDATION

Amend TMC 12.10 to reflect the recommended changes.

INFORMATION SUMMARY

As part of the continuing effort to update the Tigard Municipal Code, certain changes are being recommended to the water system rules and regulations section of the TMC. These changes are being recommended to:

- Better clarify roles and responsibilities of water customers
- Delete code sections relating to operational procedures or practices which no longer apply
- Align code provisions with current business practices that have evolved over time.

Specifically, changes are being proposed to the following sections;

- Application for Service (12.10.010)
- Service Size (12.10.030)
- Separate Connections (12.10.040)
- Service Pipe Standards and Maintenance (12.10.060)
- Jurisdiction of Water System (12.10.080)
- Temporary Discontinuance of Service (12.10.140)
- Service Connection Maintenance (12.10.160)
- Main Extensions (12.10.170)
- Illegal Use of Fire Hydrant or Meter (12.10.240)

Staff is also recommending the addition of section 12.10.045 titled Master Metering, and the deletion of sections Fire Hydrants (12.10.220) and Main Extensions, (12.10.170.A and B.) These changes were considered by the Intergovernmental Water Board (IWB) at their August 14, 2002 meeting. Upon adoption of these changes by the City Council, the IWB will need to adopt identical changes to their "Rules and Regulations" so all customers in the Tigard Water service area are under the same criteria.

OTHER ALTERNATIVES CONSIDERED

Retain TMC 12.10 as written

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

1. Proposed ordinance with Exhibit “A”

FISCAL NOTES

There is no cost associated with this action.

CITY OF TIGARD, OREGON

ORDINANCE NO. 02-

AN ORDINANCE AMENDING CHAPTER 12.10 WATER SYSTEMS RULES AND REGULATIONS
OF THE TIGARD MUNICIPAL CODE

WHEREAS, Chapter 12.10 of the Tigard Municipal Code establishes the rules and regulations for the Water system; and

WHEREAS, there are code sections relating to operational procedures and practices which no longer apply that need to be deleted; and

WHEREAS, changes are needed to Chapter 12.10 of the TMC to clarify roles and responsibilities of water customers; and

WHEREAS, code provisions need to align with current business practices that have evolved over time.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Tigard City Council does hereby amend Chapter 12.10 of the Tigard Municipal Code as shown in the attached Exhibit "A".

SECTION 2: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of, 2002.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2002.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

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Chapter 12.10 WATER SYSTEM RULES AND REGULATIONS.

Sections:

- 12.10.010 Application For Service.
- 12.10.020 Use Of Water.
- 12.10.030 Service Size.
- 12.10.040 Separate Connection.
- 12.10.045 Master Metering
- 12.10.050 Furnishing Water.
- 12.10.060 Private Service Pipes.
- 12.10.070 Credit For Water Leaks.
- 12.10.080 Jurisdiction.
- 12.10.090 Waste - Plumbing - Inspection.
- 12.10.100 Physical Connections With
Other Water Supplies Or
Systems.
- 12.10.110 Cross Connection Control
Program.
- 12.10.120 Payment - Delinquency.
(Repealed By Ord. 96-02).
- 12.10.130 Water Rates.
- 12.10.140 Discontinuance Of Service.
- 12.10.150 Interrupted Service - Changes
In Pressure.
- 12.10.160 Service Connection
Maintenance.
- 12.10.170 Main Extensions.
- 12.10.180 Limitation On The Use Of
Water.
- 12.10.190 Temporary Or Transient
Service.
- 12.10.200 Construction Water.
- 12.10.210 Meter Out-Of-Order - Test.
- 12.10.220 Fire Hydrants.
- 12.10.230 Fire Hydrant - Temporary Use.
- 12.10.240 Illegal Use Of Fire Hydrant Or
Meter.
- 12.10.250 Amendments - Special Rules -
Contracts.
- 12.10.260 Grievances.
- 12.10.270 The Public Works Director And
Authorized Representatives.
- 12.10.280 Power To Grant Variances.

- 12.10.300 Findings And Declaration Of A
Water Emergency.
- 12.10.310 Levels Of Prohibition.
- 12.10.320 Enforcement.
- 12.10.330 Penalties.
- 12.10.340 Water Shut-Off.
- 12.10.350 Definition.

12.10.010 Application For Service.

No service will be supplied or water furnished to any premises without customer first requesting service with the City. except upon written application on printed forms of the City. (Ord. 93-34)

12.10.020 Use Of Water.

Water will be furnished for ordinary domestic, business and community purposes, and fire protection only. No water will be furnished for the direct operation of steam boilers, machinery or golf courses, except on an interruptible basis, and the City will assume no responsibility therein. (Ord. 93-34)

12.10.030 Service Size.

~~A standard service connection, with 5/8" x 3/4" meter, will be installed from the main to the street curb or property line. The amount of the meter installation charge shall accompany all applications. Larger meters may be required for some services. The size of meter shall be determined by the City management. The City shall prescribe the number of buildings to be served from one meter and such determination shall be final. No customer shall furnish water to any family, business, institution, or premises other than those occupied by that customer; provided, however, that the City Council may permit a customer to supply others through customer's service connection, in which event such customer will be charged an additional monthly minimum for each additional customer so supplied. Such~~

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~~permit may be revoked and separate service connections required at any time. (Ord. 93-34)~~

Upon the application for new water service, and payment of all charges, the City will install a service connection and meter of such size and location as approved by the Public Works Department. Meter and water service piping shall be sized as using the fixture count method as described in the State of Oregon Uniform Plumbing Code. The minimum size of any water meter, which connects to the city water system, shall be five-eighths/three-fourths inch.

In new subdivisions, the City may allow the installation of water mains, valves, hydrants and water services by the developer as a part of improvements, as described in this chapter.

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12.10.040 Separate Connection.

A separate service connection will be required for each dwelling, apartment or motel, place of business, and institution. All outlying buildings and premises used as a part of such dwelling place or business or institution may be served from such connection, as well as all buildings on such premises operated under the one management. City shall prescribe the number of buildings to be served from one meter and such determination shall be final. ~~No customer shall furnish water to any family, business, institution or premises other than those occupied by that customer; provided, however that the City Council may permit a customer to supply others through customer's service connection in which event such customer will be charged an additional monthly minimum for each additional customer supplied. Such permit may be revoked and separate service connections required at any time.~~ (Ord. 93-34)

12.10.045 Master Metering.

The City may permit the master metering of more than one water service. The owner shall designate the person who will be responsible for the payment of all water charges and will accept service of all water related notices. If any payment is not made in full when due, the City may terminate service even if partial payment is tendered by other occupants of the premises.

12.10.050 Furnishing Water.

The City shall not be obligated to furnish and install, at its expense, system facilities for all property within the City. The City shall, so far as reasonable and practicable and within its financial means, however, provide adequate source of supply, necessary primary feeder mains, storage facilities and other improvements necessary to make water service generally available to all areas within the City. Extensions to furnish water to

areas not now served by the City will be made at the expense of those persons requesting service. Such extensions will be made by the City or by those expressly authorized by the City. All applications for line extensions to provide new service are subject to review by the City Council. Consideration will be given to the City's ability to serve and to eligibility for annexation to the City of the property to be served. The City may contract with other governmental entities for the provision of water. The terms of service will be defined by agreement and consistent with the terms of this Chapter. (Ord. 93-34)

12.10.060 Private Service Pipes. Service Pipe Standard and Maintenance.

~~All pipes from the meter to the premises must be installed in accordance with good engineering practice, and maintained in good order by the customer. Pipes must be laid 24 inches deep, provided with a stop and waste valve for drainage, and all standpipes or fittings of any kind must be so located, anchored and installed as not to interfere with or endanger the meter. All pipes must be well protected from freezing.~~ (Ord. 93-34)

Service pipes of all sizes, within or without the premises, whether for domestic, commercial, or fire protection purposes, must be materials, quality, class, and size as specified by the state plumbing code or regulations of the City.

The service pipe within the premises and throughout its entire length to the water meter or to the property line if the water meter is set behind the property line, must be kept in repair and protected from freezing at the expense of the customer, lessee, or agent, who shall be responsible for all damages resulting from leaks or breaks.

12.10.070 Credit For Water Leaks.

When a water leak occurs on the customer's side of the water meter resulting in an unusually

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high water bill, customers may apply for a credit. The credit is limited to the difference between the average wholesale cost of water multiplied by the number of water units estimated to have leaked, and the total amount of the water bill less normal usage. The average wholesale cost of water is the per unit average cost of water as established by the Intergovernmental Water Board at the beginning of each fiscal year. The application to the City for the credit must be in writing and must include proof of the leak being fixed within 10 days of discovery of the leak.

Any applications for credits greater than this code section allows will be considered by the Intergovernmental Water Board. (Ord. 96-39; Ord. 96-02; Ord. 93-34)

12.10.080 Jurisdiction of Water System

~~All service connections, meters, mains and parts of the system through which water is served, except the pipes beyond the meter, are the property of the City, and under its exclusive control. No person other than the Public Works Director or authorized person shall install any service, make any extension, turn the water on or off, or otherwise tamper or interfere with the water or the system. (Ord. 93-34)~~

The operation and repair of the City's water system, including pipes, valves, pumps, reservoirs, fixtures, etc. is the complete responsibility of the City's Public Works Department. No plumber, contractor, or other person will be allowed to connect to or operate any part of the City's water system up to and including the water meter.

12.10.090 Waste - Plumbing - Inspection.

Water will not be furnished to premises where it is allowed to run or waste to prevent freezing or through defective plumbing or otherwise. Plumbing should be of high test and first class and in conformance with the appropriate codes of the jurisdiction issuing the

building permit and where pressures may become high on 5/8" x 3/4" and 1" meters, a pressure regulator may be installed at the meter by the City to control varying pressures. (On meters 1 1/2" and larger, customer is responsible for installing a pressure regulator.) The City will not be responsible for damage from varying pressures. The Public Works Director or authorized person may inspect pipes and plumbing at proper times. (Ord. 93-34)

12.10.100 Physical Connections With Other Water Supplies Or Systems.

Neither cross connections nor physical connections of any kind shall be made to any other water supply, whether private or public, without the written consent and approval of the City Council, and the written approval of the Oregon State Board of Health. (Included in this category are all pipe lines, appurtenances and facilities of the City system and all pipes, appurtenances, pumps, tanks, storage reservoirs, facilities, equipment, appliances, etc., of other systems whether located within or on public or private property, or the premises of a water customer.)

The City's Public Works Director or other authorized representative shall have the right, at all reasonable times, to enter upon private property to inspect the premises of customers for physical connections with other water supplies. However, before entering upon private property, the Public Works Director or other authorized representative shall obtain the consent of an occupant or a warrant of the Municipal Court authorizing entry for the purpose of inspection. Any such connection shall be removed by the customer within ten days after written notice to remove is given by the City. If not removed within the time specified, the City may remove or discontinue any connection which it may have for servicing the property.

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No search warrant shall be issued until an affidavit has been filed with the Municipal Court showing probable cause for the inspection by stating the purpose and extent of the proposed inspection citing this Chapter as the basis for the inspection whether it is an inspection instituted by complaint or other specific or general information concerning physical connections with water supply systems violations.

No person shall interfere with or attempt to prevent the Public Works Director or other authorized representative from entering upon private premises and inspecting the property when an emergency exists or the Public Works Director or authorized representative exhibits a warrant authorizing entry. (Ord. 93-34)

12.10.110 Cross Connection Control Program.

The purpose of this section is to protect the water supply of the City from contamination or pollution from potential cross connections; and to assure that approved backflow devices are tested annually as follows:

A. The installation or maintenance of any cross connection which would endanger the water supply of the City is prohibited. Any such cross connection now existing or hereafter installed is hereby declared unlawful and shall be rectified as directed by the City or its authorized representative(s).

B. The control or elimination of cross connections shall be in accordance with the regulations of Oregon State Health Division. The policies, procedures, and criteria for determining appropriate levels of protection shall be in accordance with the Accepted Procedure and Practice in Cross Connection Control Manual, Amer. Water Works Association, Pacific Northwest Section, current edition (OR Admin.

Rules, Ch. 333-61.070).

C. It shall be the objective of the City to protect the potable water system from contamination or pollution due to cross connections. Water service to any premises shall be contingent upon the customer providing cross connection control in a manner approved by the City. Backflow devices required to be installed shall be a model approved by the Oregon State Health Division.

D. Authorized employees of the City with proper identification shall have free access at reasonable hours of the day to those parts of a premise or within buildings to which water is supplied. Water service may be refused or terminated to any premise for failure to allow necessary inspections.

E. These requirements must be strictly observed as a matter of public health and to prevent any possible contamination of the water system. (Ord. 93-34)

12.10.120 Payment - Delinquency. (Repealed by Ord. 96-02).

(Repealed by Ord. 96-02, Ord. 96-02; Ord. 93-34)

12.10.130 Water Rates.

All rates, fees and charges shall be set by resolution of the Tigard City Council. (~~Ord. 93-34~~)

12.10.140 Temporary Discontinuance Of Service.

Temporary discontinuance of service for 30 days or more will ~~be made occur without charge upon when the customer notifies the City of date of intent, time period of discontinuance written application, without charge,~~ and provided all bills are paid. (Ord. 93-34)

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12.10.150 Interrupted Service - Changes In Pressure.

The water may be shut off at any time for repairs or other necessary work with or without notice. Conditions may cause a variation of the pressure. The City will not be responsible for any damage caused by interruption of service or varying pressure. When service is interrupted, hot water faucets should be kept closed to prevent backflow of hot water or steam. (Ord. 93-34)

12.10.160 Service Connection Maintenance.

The City will maintain all standard service connections in good repair without expense to the customers. Each customer is required to use reasonable care and diligence to protect the water meter and meter box from loss or damage by freezing, hot water, traffic hazards, and other causes, in default of which, such customer shall pay to the City the full amount of the resulting damage.

Each customer is required to maintain vegetation and other obstruction free zone of a minimum of two feet around the meter box. Clear access to the meter shall be from the street side in a direct path to the water meter. Failure to maintain the area will result in City personnel clearing the area to meet the City's meter reading and maintenance needs. Customer will be charged any related expenses of the City in clearing the area. City shall have no liability for trimming or maintaining vegetation in order to read meters. (Ord. 93-34)

12.10.170 Main Extensions.

~~A. Designed and Installed by the City.~~

~~———— All extensions of mains and laterals of the City, and installed by the City, shall be paid for by the applicant at cost, plus 10% for overhead~~

~~and supervision, and 8% for engineering. The estimated cost thereof, together with such 18%, shall be deposited with the City when application for such main extensions is made.~~

~~———— B. Designed by Others, Installed by the City.~~

~~———— When design or supervision of installation of improvements is performed by licensed engineers, subject to approval by the City, and installed by the City, a fee shall be paid of 10% for administration, inspections, water loss, sampling, etc., and 2% for engineering review. The estimated cost thereof, together with such 12%, shall be deposited with the City when application for such main extensions is made.~~

C. Designed and Installed by Others.

When design or supervision of installation of improvements is performed by licensed engineers, and installation is performed and paid for by others, subject to approval by the City, a fee in accordance with the Fees and Charges Schedule shall be imposed. ~~of 12% of construction costs shall be imposed for development charges.~~

Size of such extensions, type of pipe, location, gate valves, fixtures, fire hydrants and other fittings shall be under City specifications and subject to City approval, and such mains shall be laid from the end of the existing main to the far end of the property to be served. No lines or laterals shall be laid until the estimated cost thereof, as hereinabove set forth, shall have been deposited with the City. All such extensions of mains and laterals, and installation of fire hydrants shall be the sole property of the City, without right of immediate refund on the part of the person or persons paying for such extension or on the part of any person or persons whomsoever. No extension of main will be permitted, accepted or served by the City unless such line be at least a 6-

TIGARD MUNICIPAL CODE

inch diameter pipe. Short extensions, such as cul-de-sacs, can be of small diameter upon approval of the City.

When a person is required to pay the cost of extending a water main adjacent to property other than that person's own so that water service for domestic use is provided for such other property without further extension of the water main, the City shall require the owner of the other property, prior to providing water service to that property, to refund to the person required to pay the cost of extending the water main, a pro rate portion of the cost of extension. The right to require such refund shall not continue for more than 10 years after the date of installation of the extension of the water main. The amount to be refunded shall be determined by the City and such determination shall be final.

Each construction contractor shall be approved by the City's Public Works Director prior to installing pipe lines, pumps, etc. Those installations made by private contractors will be thoroughly inspected and approved by the City to ensure compliance with plans and specifications. Back-filling of trenches prior to City approval is unauthorized.

If water main extension is necessary to serve an existing single family dwelling and the main size required by the City is larger than a 6" The expense of the installation across the front of their property, plus the cost of the meter will be with the developer or owner requesting the extension.

The developer or owner requesting the construction project shall be liable for any added cost due to design difficulties. Applicant(s) will agree to be bound by and comply with the City's main extension policy and rules and regulations and any subsequent revisions or amendments to same which may be made from time to time. (Ord. 93-34)

TIGARD MUNICIPAL CODE

12.10.180 Limitation On The Use Of Water.

A. Limitation on the use of water as to hours, purpose, or manner may be prescribed from time to time by order of the Public Works Director, based on a finding that the limitation is reasonable given the available and projected water supply and demand. Any order under this section shall be reviewed by City Council at its next session following issuance of the order. The City Council may affirm, withdraw or amend the order.

B. The Public Works Director, the City Manager or the City Council may call for voluntary reductions in water use, including, but not limited to, voluntary rotational watering plans. (Ord. 01-15 §1, Ord. 93-34)

12.10.190 Temporary Or Transient Service.

Temporary or transient service for construction work will be rendered upon deposit in advance of connection charge and one month's estimated water bill, and payment on the first of each month of all accrued charges. Upon discontinuance of service, refund will be made for all connection materials usable by the City at their depreciated value, less the cost of removal and all charges due. No temporary service shall be installed for any residence or building where permanent service connection may later be installed. (Ord. 93-34)

12.10.200 Construction Water.

Rates, fees and charges for water used via a permanent meter installation for construction purposes shall be set by resolution of the City Council. The charges shall be billed at completion of construction, but shall not exceed a period of 6 months, unless authorized by the City. (Ord. 93-34)

12.10.210 Meter Out-of-Order - Test.

If a meter shall fail to measure accurately, the bill shall be the average for the same periods in prior years. Tests will be made periodically without charge to the customer. A customer may demand a test upon payment of a charge for such test. The rates, fees and charges for this test shall be set by resolution of the City Council. (Ord. 93-34)

~~12.10.220~~ ~~Fire Hydrants.~~

~~Fire hydrants will be installed by the City upon receipt of payment in advance of the estimated cost of the hydrant, fittings, and installation, plus 10% for overhead. (Ord. 93-34)~~

12.10.230 Fire Hydrant - Temporary Use.

Any person who desires to use a fire hydrant for temporary water supply must obtain permission of the City. The charge for temporary use shall be set by resolution of the City Council. Customer is responsible for repair and/or replacement of damaged meter. (Ord. 93-34)

12.10.240 Illegal Use Of Fire Hydrant Or Meter.

~~The penalty for connection~~ Connection to a fire hydrant or meter without proper authority is a ~~\$100 fine.~~ Class 1 civil infraction. (Ord. 93-34)

12.10.250 Amendments - Special Rules - Contracts.

The City may at any time amend, change or modify any rule, rate or charge, or make any special rule, rate or contract, and all water service is subject to such power. (Ord. 93-34)

TIGARD MUNICIPAL CODE

12.10.260 Grievances.

Any grievance as to service or complaints shall be made to the Public Works Director, who shall attempt to resolve the problem. Any unresolved grievances as to service or complaints shall be reported and will be considered by the Intergovernmental Water Board at the Board's next meeting. (Ord. 93-34)

12.10.270 The Public Works Director And Authorized Representatives.

The Public Works Director or an authorized representative are not authorized to make any changes in these rules, rates, or regulations. (Ord. 93-34)

12.10.280 Power To Grant Variances.

A. Except when prohibited by subsection B of this section, upon application, the Intergovernmental Water Board may grant variances from the water system rules and regulations enacted by the City of Tigard when it finds that: 1) strict application of the rules and regulations create undue economic hardship for the applicant with no significant benefit to the water system; 2) the variance requested has no material adverse effect upon the water system and it is consistent with established policies of the Tigard City Council.

B. The Intergovernmental Water Board may not grant variances relating to annexation of property, fire protection requirements, cross-connection requirements, fees, rates and charges. (Ord. 93-34)

12.10.300 Findings and Declaration of a Water Emergency.

Upon finding that the municipal water supply is incapable of providing an adequate water supply for normal usage due to a drought, system

failure or any other event, the City Council may declare a water emergency and require that water usage must be curtailed. The declaration shall include the effective date, the reason for the declaration and the level of prohibition declared. The City Council may include an estimated time for review or revocation of the declaration. (Ord. 01-15 §2)

12.10.310 Levels Of Prohibition.

A. Level I – Limited. The following activities or actions are prohibited under a Level I declaration:

1. Watering, sprinkling or irrigating lawn, grass or turf; exceptions:
 - (a) New lawn, grass or turf that has been seeded or sodded 90 days prior to declaration of a water shortage may be watered as necessary until established;
 - (b) High-use athletic fields that are used for organized play;
 - (c) If the Level I declaration so provides, a mandatory rotational watering plan may be imposed rather than an absolute prohibition on watering.
2. Watering, sprinkling or irrigating flowers, plants, shrubbery, ground cover, crops, vegetation or trees except from 6:00 p.m. to 10:00 a.m.
3. Washing, wetting down or sweeping with water, sidewalks, walkways, driveways, parking lots, open ground or other hard surfaced areas; exceptions:

TIGARD MUNICIPAL CODE

- (a) Where there is a demonstratable need in order to meet public health and safety requirements, such as: to alleviate immediate fire or sanitation hazards; for dust control to meet air quality requirements mandated by the Oregon Department of Environmental Quality;
 - (b) Power washing of buildings, roofs and homes prior to painting, repair, remodeling or reconstruction, and not solely for aesthetic purposes.
4. Washing trucks, cars, trailers, tractors and other land vehicles or boats or other water-borne vehicles, except by commercial establishments or fleet washing facilities which recycle or reuse the water in their washing processes or by bucket and hose with a shut-off mechanism; exception:
- (a) Where the health, safety and welfare of the public is contingent upon frequent vehicle cleaning, such as: to clean garbage trucks and vehicles that transport food and other perishables, or otherwise required by law. Owners/operators of these vehicles are encouraged to utilize establishments that recycle or reuse the water in their washing process.
5. Cleaning, filling or maintaining decorative water features, natural or manmade, including, but not limited to, fountains, lakes, ponds and streams, unless the water is recirculated through the decorative water feature. Water features that do not include continuous or constant inflowing water are not included.
6. Wasting water by leaving unattended hoses running.
7. Water line testing and flushing in connection with construction projects; exception:
- (a) Testing and flushing of critical water facilities.
8. Other actions that the City Council determines should be restricted, consistent with a Level I situation, including any restriction or curtailment imposed on the City by water suppliers or applicable law, regulation or order.
- B. Level II – Moderate. The following activities or actions are prohibited under a Level II declaration:
- 1. Actions and activities prohibited in a Level I situation.
 - 2. Watering of any lawn, grass or turf, regardless of age or usage.
 - 3. Watering, sprinkling or irrigating flowers, plants, shrubbery, groundcover, crops, vegetation or trees.
 - 4. Washing of vehicles other than in establishments that recycle.
 - 5. Power washing of buildings, regardless of purpose, is prohibited.

TIGARD MUNICIPAL CODE

6. Any additional actions that the City Council determines should be restricted consistent with a Level II situation.
- C. Level III – Severe. In addition to the restrictions imposed under Level I and Level II, the City Council may impose any other restriction on water use or activities that may require the need for water supplies, consistent with the City water supply contracts. Activities that may require the need for water supplies include fireworks displays and other events that create a risk of fire. In imposing a Level III restriction, the City Council shall consider any restriction recommended by the Public Works Director or by any Fire District serving the City. (Ord. 01-15 §3)

12.10.320 Enforcement.

- A. Warning. The City shall send a letter of warning for each violation of a curtailment restriction if no previous letter of warning has been sent to the person responsible for the violation. The letter of warning shall specify the violation, may require compliance measures and shall be served upon the person responsible for the violation. Service may be in person, by office or substitute service or by certified or registered mail, return receipt requested.
- B. Civil Infraction. After the person responsible for the violation has received a warning letter, any subsequent violation shall be treated as a civil infraction under Chapter 1.16. (Ord. 01-15 §4)

12.10.330 Penalties.

- A. First Violation – Warning letter.
- B. Second Violation of the same type – Class 3 infraction \$50.
- C. Third violation of the same type – Class 2 infraction \$100.
- D. Fourth and subsequent violations of the same type – Class 1 infraction \$250. (Ord. 01-15 §5)

12.10.340 Water Shut-Off.

After the third violation of a curtailment restriction, the Public Works Director may order that the water service to the location where the violation has occurred shall be shut-off or reduced. A shut-off notice shall be posted on the property at least 48 hours prior to the scheduled shut-off or reduction. The shut-off notice shall specify the reasons for the shut-off or reduction. Any person wishing to avoid a shut-off must provide the Public Works Director with evidence that the shut-off will create a health or safety risk. All shut-offs imposed under this section shall be temporary, not to exceed thirty (30) days, provided the applicable charges are paid prior to reconnection. The reconnection charge and, if applicable, the meter disconnection charge imposed under Section 12.03.030 shall be paid before the reconnection. (Ord. 01-15 §6)

12.10.350 Definition.

As used in Sections 12.10.180 through 12.10.350:

“Rotational watering plan” means a plan for watering lawns and/or gardens on specific days or at specific times and not on other days or times. A rotational watering plan may be voluntary or mandatory. (Ord. 01-15 §7) ■

AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution of the City of Tigard authorizing the issuance and sale of its General Obligation Bond and General Obligation Refunding Bond to the Oregon Economic and Community Development Department

PREPARED BY: Craig Prosser DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Council authorize the sale of an interim bond and a permanent (i.e. refunding) bond to the Oregon Economic and Community Development Department (OECDD) to fund the New Tigard Library project?

STAFF RECOMMENDATION

Approve issuance of the bonds

INFORMATION SUMMARY

On May 21, 2002, Tigard voters approved the issuance of \$13,000,000 of General Obligation Bonds for the new Tigard Library. Staff began the process to issue these bonds this fall. The Oregon Economic and Community Development Department (OECDD) contacted the City in late June, however, with an offer to provide financing for this project through the Oregon Bond Bank. (OECDD previously loaned the City money for the Cook Park Project through this same program.) Staff analyzed the pros and cons of issuing bonds on our own or financing this project through OECDD. Staff presented this analysis to Council on July 23, 2002, and the Council agreed with the staff recommendation to finance this project through OECDD.

OECDD normally funds projects such as the New Library Project by loans, using a combination of state bond proceeds and funds from the Oregon State lottery. In this instance, the City Attorney and bond counsel for OECDD concluded that the City must issue a General Obligation Bond, as approved by the voters, in order to pay for financing using the General Obligation Bond levy. The attached resolution and all documents are set up to authorize the issuance of bonds.

One of the City's conditions in working with OECDD was to receive funds in hand no later than October 15, 2002 so that it can exercise the option to purchase the property. OECDD committed to meeting this schedule. The State Treasurer, however, controls state bond sales. The Treasurer scheduled the OECDD bond sale for November. In order to meet the City's need for funds in hand by October 15, OECDD has offered to provide interim funding by purchasing a short-term (one year) bond that will be fully pre-payable. Once the Oregon Bond Bank sells its bonds in November, the City will then issue a refunding bond to pay-off the interim financing and to convert the financing to a 20 year term. There is no cost to the City and no negative impact on interest rates from this arrangement. The resolution authorizes the City to issue both sets of bonds.

OTHER ALTERNATIVES CONSIDERED

The City could issue its General Obligation Bonds on its own. However, to do so, the City would have to pay costs associated with the issuance of the bonds which would reduce the net amount of funding for the Library project. These additional costs could range from \$200,000 to \$260,000. In addition, OECDD will obtain the money to buy the City's bonds by issuing bonds of its own and then pass that interest rate on to the City. OECDD will buy bond insurance to obtain a Aaa credit rating for its bonds, thereby achieving a lower interest rate than the City could achieve for uninsured bonds.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

NA

ATTACHMENT LIST

Resolution

FISCAL NOTES

Authorizing issuance of these bonds will obtain \$13,000,000 for the New Library Project while avoiding up to \$260,000 in bond issuance costs.

CITY OF TIGARD, OREGON

RESOLUTION NO. 02-_____

A RESOLUTION OF THE CITY OF TIGARD AUTHORIZING THE ISSUANCE AND SALE OF ITS
GENERAL OBLIGATION BOND AND GENERAL OBLIGATION REFUNDING BOND TO THE
OREGON ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

The City of Tigard finds:

WHEREAS, the City Council of the City of Tigard submitted to the legal voters of the City the question of contracting a general obligation bonded indebtedness in the sum of an amount not to exceed \$13,000,000 to finance capital construction and improvements related to a library and to pay all costs incidental thereto; and

WHEREAS, the election was duly and legally held on May 21, 2002, and the City Council has canvassed the result thereof and has declared that at least 50 percent of all qualified voters of the City voted and that issuance of bonds has been approved by a majority of the qualified voters of the City voting at the election; and

WHEREAS, the City of Tigard is a “municipality” within the meaning of Oregon Revised Statutes 285B.410(4), and

WHEREAS, Oregon Revised Statutes 285B.410 through 285B.479 (the “Act”) authorize any municipality to file an application with the Oregon Economic and Community Development Department (the “Department”) to obtain financial assistance from the Special Public Works Fund in the form of a loan, grant or purchase of a bond of a municipality, and

WHEREAS, the City of Tigard has filed an application with the Department to obtain financial assistance for a “community facilities project” within the meaning of the Act, and

WHEREAS, the Department has approved the City of Tigard’s application for financial assistance from the Special Public Works Fund pursuant to the Act, and

WHEREAS, the Department is not able to provide long-term, permanent financial assistance prior to the date the City needs funds to begin construction of the project, as determined below, but is able to provide interim financing for the City’s commencement of construction, and

WHEREAS, the City will issue its general obligation bond to the Department and enter into a credit facility to obtain interim financing and will issue a general obligation refunding bond to the Department to refund the general obligation bond when the Department is able to provide long-term financing, and

WHEREAS, the City of Tigard is required, as a prerequisite to the receipt of financial assistance from the Department, to enter into a Financial Assistance Award Contract and a Credit Facility or Bond Purchase Agreement with the Department, and

RESOLUTION NO. 02 - ____

WHEREAS, the project to be funded by these Bonds includes the acquisition of 14.7 acres of land on Hall Blvd. in Tigard, the design and construction of a 47,500 library, and related site and street improvements and is a “community facilities project” within the meaning of the Act which is needed by and is in the public interest of the City of Tigard, and

WHEREAS, notice relating to the City of Tigard’s consideration of the adoption of this Resolution was published at least once in a newspaper of general circulation within the City of Tigard. Such notice was published at least 14 days in advance of the adoption of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TIGARD CITY COUNCIL THAT:

SECTION 1: Bonds Authorized. The City Council authorizes the Director of Finance or his designee (the “Director of Finance”) to execute applicable Financial Assistance Award Contracts, Credit Facility, Bond Purchase Agreement, the General Obligation Bond (the “Bond”) and the General Obligation Refunding Bond (the “Refunding Bond,” collectively with the Bond, the “Bonds”) and such other documents as may be required for the City to issue the Bonds to the Department, on the condition that the principal amount of each of the Bonds is not in excess of \$13,000,000 and the interest rate is a percent deemed reasonable by the Director of Finance and in the best interest of the City of Tigard. The proceeds of the Bond shall be applied solely to the “Costs of the Project” as such term is defined in the Bond Purchase Agreement. The proceeds of the Refunding Bond shall be applied to refund the Bond.

SECTION 2: Security. The Bonds are voter-approved general obligation bonds of the City of Tigard. The City of Tigard hereby pledges its full faith and credit to the payment of the Bonds. The Bonds shall be payable from ad valorem taxes which may be levied without limitation as to rate or amount on all taxable property within the boundaries of the City of Tigard. The City hereby covenants for the benefit of the Department to levy a direct ad valorem tax upon all of the taxable property within the City which is sufficient, after taking into consideration discounts taken and delinquencies that may occur in the payment of such taxes, to pay all principal and interest on the Bonds when due.

SECTION 3: Additional Documents. The Director of Finance is hereby authorized to enter into any agreements and to execute any documents or certificates which may be required to issue the Bonds to the Department to finance the Project pursuant to the related Financial Assistance Award Contract and the Bond Purchase Agreement.

SECTION 4: Tax-Exempt Status. The City of Tigard covenants not to take any action or omit to take any action if the taking or omission would cause interest paid by the City of Tigard on the Bonds not to qualify for the exclusion from gross income provided by Section 103(a) of the Internal Revenue Code of 1986, as amended. The Director of Finance of the City of Tigard may enter into covenants on behalf of the City of Tigard to protect the tax-exempt status of the interest paid by the City of Tigard on the Bonds and may execute any Tax Certificate, Internal Revenue Service forms or other documents as shall be required by the Department or its bond counsel to protect the tax-exempt status of such interest.

SECTION 5: Reimbursement Bonds. The City of Tigard may reimburse expenditures for the Project with amounts received from the Department pursuant to the Bonds and City of Tigard Resolution 01-25. Additionally, the City of Tigard understands that the Department may fund or

reimburse itself for the funding of amounts paid to the City of Tigard pursuant to the Bonds with the proceeds of bonds issued by the State of Oregon pursuant to the Act. This Resolution shall constitute "official intent" within the meaning of Section 1.150-2 of the Income Tax Regulations promulgated by the United States Department of the Treasury with respect to the funding or the reimbursement for the funding of the costs of the Project with the proceeds of the City of Tigard's Bonds and with the proceeds of any bonds issued by the State of Oregon pursuant to the Act.

SECTION 6: This Resolution shall be in force and effect from and after passage by the City Council.

PASSED: This _____ day of _____ 2002.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

Agenda Item No.: 12
Meeting of: August 27, 2002

Packet Materials for

**Local Contract Review Board to Consider
the Award of the Contract for Architectural
and Design Services for the New Tigard
Library**

will be available in hard copy by Friday, August 23, 2002 and will
be delivered to City Council in their Friday mail packet

Contact the City Recorder's Office at 503-639-4171
for more information

AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Mixed Use Residential Development Code Amendments

PREPARED BY: Julia Hajduk DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should the Development Code be amended to exempt properties that were zoned commercial prior to being zoned Mixed Use Residential 1 or 2 from being required to meet minimum residential density requirements in order to develop a commercial use?

STAFF RECOMMENDATION

Adopt the proposed exemption amendment by adopting the attached Ordinance.

INFORMATION SUMMARY

At the City Council hearing on February 26, 2002, implementing the Washington Square Regional Center Plan and Development Code amendments, testimony was received from a property owner of property zoned neighborhood commercial who would no longer be able to build as he had planned under the new zoning of mixed use residential (MUR). The MUR 1 and 2 zones allow commercial development but require that the minimum density be met in order to have a commercial component. While the Council felt that the plan itself was acceptable and implemented the zoning, it was felt that this issue should be looked at in more detail and staff was directed to provide additional information on the issue. A concern was that all similar properties be treated the same and, if Council felt changes were needed, it should be simple, fair and consistent among all similarly affected properties. It was determined that there are 10 properties in the City of Tigard that had a commercial zone and were changed to mixed use residential (MUR 1 or MUR 2). Because these properties were at one time not required to be mixed use in order to develop any commercial uses and the new standards could result in a non-conforming use or properties having restrictions, it was determined that an exemption to the minimum density requirement may be appropriate. On the direction of Council, a proposed amendment to the development code was drafted which exempts the 10 properties previously zoned commercial from being required to build a minimum residential density before being permitted to construct a commercial use.

The Planning Commission held a public hearing on the issue on June 17, 2002. No public testimony was received and, after deliberation, the Planning Commission voted unanimously to forward a recommendation of approval of the amendment to the City Council. The City Council opened the hearing on this issue at the July 23, 2002 meeting and continued the hearing to allow for re-notice after an omission was discovered on the vicinity map that had been included in the original notice. Notice has been re-mailed and re-published with a corrected map that includes all affected property owners.

OTHER ALTERNATIVES CONSIDERED

1. Do not adopt the proposed amendment.
2. Ask for revisions to the proposed exemptions.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Growth and Growth Management Goal #1, Strategy #5, “Address planning and growth issues associated with the Regional Center.”

ATTACHMENT LIST

Attachment 1: Draft Ordinance

Exhibit A: Staff Report

Exhibit B: Proposed Development Code Amendments

Exhibit C: Map of affected properties

Attachment 2: Draft June 17th Planning Commission Minutes

FISCAL NOTES

N/A

CITY OF TIGARD, OREGON

ORDINANCE NO. 02-

AN ORDINANCE EXEMPTING PROPERTIES THAT ARE ZONED MUR 1 OR 2 THAT WERE ZONED COMMERCIAL PRIOR TO MARCH 28, 2002 FROM MEETING CERTAIN REQUIREMENTS BEFORE BEING PERMITTED TO HAVE A COMMERCIAL USE.

WHEREAS, the Washington Square Regional Center Plan was a multi-year plan that was started in 1997 and adopted and implemented in February 2002, and

WHEREAS, there were several new zoning districts designated in the Regional Center including the Mixed Use Residential (MUR) 1 and 2 zoning designations; and

WHEREAS, the MUR 1 and 2 zoning designations permit commercial uses only after the minimum residential density is met; and

WHEREAS, there are 10 properties that had been zoned commercial prior to the implementation of the Regional Center Plan and zoning; and

WHEREAS, many of these properties have already been developed with commercial uses which would become non-conforming, and other properties were vacant and the owners had plans to develop as commercial only uses; and

WHEREAS, the City Council felt it appropriate to address this unique issue so as not to create immediate non-conforming uses or add undue burden on property owners' ability to develop their property; and

WHEREAS, if these 10 properties are exempted from meeting the residential density requirement, the City would continue to comply with Metro's target capacity requirements; and

WHEREAS, the properties would continue to be permitted and encouraged to develop with all residential or mixed use developments; and

WHEREAS, the Planning Commission held a public hearing, which was noticed in accordance with the City standards, on 6-17-02 and voted unanimously to recommend approval of the requested amendments to the City Council; and

WHEREAS, the City Council held a public hearing, which was noticed in accordance with City standards, on 7-23-02 and 8-27-02 and voted to approve the proposed amendments; and

WHEREAS, the decision to adopt was based on compliance with Oregon Statewide Planning Goals #1, #2, #9, and #10; Metro functional Plan Titles 1 and 7; Comprehensive Plan Policies 1.1.1, 2.1.1, 2.1.2, 5.1 and 6.1.1; and Community Development Code Chapters 18.380.020 and 18.390.060 as detailed in the staff report (Exhibit A),

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The requested amendments are approved based on the analysis and findings in the staff report (Exhibit A).

SECTION 2: The adopted development code text amendments, are shown in Exhibit B and the affected properties are shown in Exhibit C.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2002.

Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2002.

James E. Griffith, Mayor

Approved as to form:

City Attorney

Date

PLANNING COMMISSION
RECOMMENDATION TO THE
TIGARD CITY COUNCIL



SECTION I. APPLICATION SUMMARY

CASE NAME: **MIXED USE RESIDENTIAL (MUR 1 & 2) DEVELOPMENT CODE AMENDMENTS**

CASE NO.: **Zone Ordinance Amendment (ZOA) 2002-00003**

PROPOSAL: The request is to modify the existing Tigard Development Code language to exempt certain Mixed Use Residential (MUR 1 and 2) properties from being required to meet minimum residential density requirements prior to being permitted to have a commercial use on the property. The exemption would only apply to properties in the Washington Square Regional Center that were zoned commercial prior to March 28, 2002. There are 10 parcels (totaling 5.25 acres) within the City of Tigard's portion of the Regional Center that this exemption applies to and are impacted by this amendment. Approximately 1.63 acres were identified as vacant or re-developable in determining target capacity numbers for the Regional Center, therefore, the number of units that would be deducted from the potential capacity numbers, if no residential use were constructed on these lots, is approximately 42 units.

APPLICANT: City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

ZONE: Mixed Use Residential (MUR) 1&2

LOCATION: The Washington Square Regional Center area is bounded generally by Fanno Creek on the west, SW Greenburg Road and Hall Boulevard on the east, Red Tail Golf Course to the north, and Highway 217, including the Ash Creek area on the southern border. The MUR 1 and 2 zones are located within the Regional Center, generally west of Hall Blvd. and east of Ash Creek. The specific parcels affected by this amendment are identified as Assessor's map and tax lot numbers: 1S135AA-0400, 1S135AA-1400, 1S135AA-1900, 1S135AA-1901, 1S135AA-2000, 1S135AA-2500, 1S135AA-2600, 1S135AA-2700, 1S135DA-2000, and 1S135DA-1900.

APPLICABLE REVIEW

CRITERIA: Community Development Code Sections 18.380.020, 18.390.060; Comprehensive Plan Policies 1.1.1, 2.1.1 2.1.2, 5.1 and 6.1.1; Statewide Planning Goals 1, 2, 9, and 10; and Metro Functional Plan Titles 1 and 7.

SECTION II. RECOMMENDATION

The Planning Commission recommends that the City Council APPROVE the requested Zone Ordinance Amendment.

SECTION III. BACKGROUND INFORMATION and REQUEST

The City Council adopted the Washington Square Regional Center Plan and code amendments in March of 2000. The effective date of those amendments was delayed until March of 2002 at which time the Council reviewed the work completed by the Task Force for the implementation phase of the plan. It was determined that the implementation plan adequately addressed Council's previous concerns and Council passed a resolution implementing the plan. At the City Council hearing, however, testimony was received from a property owner who owned property zoned neighborhood commercial and who would no longer be able to build as he had planned under the new zoning of mixed use residential (MUR). The MUR 1 and 2 zones allow commercial development but require that the minimum density be met in order to have a commercial component. While the Council felt that the plan itself was acceptable and implemented the zoning, they felt that it was necessary to look at this issue in more detail and directed staff to provide additional information on the issue. A concern for staff was that all similar properties be treated the same and, if Council felt changes were needed, it should be simple, fair and consistent among all similarly affected properties. Staff determined that there are 10 properties in the City of Tigard that had a commercial zone and were changed to mixed use residential (MUR 1 or MUR 2). Because these properties were at one time not required to be mixed use in order to develop any commercial uses and the new standards could result in a non-conforming use or properties having restrictions, it was determined that an exemption to the minimum density requirement may be appropriate. On the direction of Council, staff drafted a proposed amendment to the development code which exempts the 10 properties previously zoned commercial from being required to build a minimum residential density before being permitted to construct a commercial use.

The total acreage of these 10 properties is 5.25 acres. Only 1.63 acres were considered vacant or re-developable for computation of target population numbers. Potential removal of this 1.63 acres from residential development equates to a loss of approximately 42 units. The densities provided by the Washington Square Regional Center bring the City above its target capacity number requirements by more than this amount. Therefore, if these properties do not include a residential component, the City would continue to exceed its target capacity numbers. It should be noted that residential only and mixed use developments would continue to be permitted and encouraged on these properties if they develop or re-develop.

The Planning Commission held a public hearing on June 17, 2002. After deliberation, the Planning Commission voted unanimously to forward a recommendation of approval to the City Council.

SECTION IV. SUMMARY OF APPLICABLE CRITERIA

Chapter 18.380 states that legislative text amendments shall be undertaken by means of a Type IV procedure, as governed by Section 18.390.060G.

Chapter 18.390.060G states that the recommendation by the Commission and the decision by the Council shall be based on consideration of the following factors:

- A. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;**
- B. Any federal or state statutes or regulations found applicable**
- C. Any applicable Metro regulations**
- D. Any applicable Comprehensive Plan Policies; and**
- E. Any applicable provisions of the City's implementing ordinances.**

SECTION V. ANALYSIS**A The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;**

Notice was provided to DLCD 45 days prior to the first scheduled public hearing as required. In addition, the Tigard Development Code and Comprehensive Plan have been acknowledged by DLCD. The following are Statewide Planning Goals that are applicable to this proposal:

Statewide Planning Goal 1 – Citizen Involvement:

This goal outlines the citizen involvement requirement for adoption of Comprehensive Plans and changes to the Comprehensive Plan and implementing documents.

Analysis: This goal has been met by complying with the Tigard Development Code notice requirements set forth in Section 18.390. Notice was mailed to all affected property owners (property that was zoned commercial prior to the implementation of the Washington Square Regional Center Plan) and properties within 500 feet of the affected properties. Notice was also published in the Tigard Times Newspaper prior to the hearing. In addition, after the hearing before the Planning Commission, additional notice was published prior to the City Council Hearing. Two Public Hearings are held (one before the Planning Commission and the second before the City Council) in which public input is welcome.

Conclusion: This goal is met.

Statewide Planning Goal 2 – Land Use Planning:

This goal outlines the land use planning process and policy framework.

Analysis: The Comprehensive Plan was acknowledged by DLCD as being consistent with the statewide planning goals. The Development Code implements the Comprehensive Plan. The Development Code establishes a process and policies to review changes to the Development Code consistent with Goal 2. The City's plan provides analysis and policies with which to evaluate a request for amending the Code consistent with Goal 2.

Conclusion: This goal is met.

Statewide Planning Goal 3 – Agricultural Lands

This goal requires, in part, that adopted comprehensive plans be revised to preserve and maintain agricultural lands.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not affect any designated agricultural land.

Conclusion: This goal is not applicable.

Statewide Planning Goal 4 – Forest Lands

This goal requires, in part, that adopted comprehensive plans be revised to preserve and maintain forest lands.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not affect any acknowledged forest lands.

Conclusion: This goal is not applicable.

Statewide Planning Goal 5 – Natural Resources

Requires the inventory and protection of natural resources, open spaces, historic areas and sites suitable for removal and processing of mineral and aggregate resources.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not affect any natural resources. While several properties are located within the 100 year floodplain, the provisions of the amendment will not allow any more development within or adjacent to the floodplain than the current standards. All regulations protecting these resource areas will continue to protect them.

Conclusion: This goal is not applicable.

Statewide Planning Goal 6 – Air, Water and Land Resource Quality

This goal is intended to maintain and improve the quality of air, water and land resources of the state by controlling waste and process discharges.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not have an impact on the compliance with Air, Water and Land Resource Quality regulations.

Conclusion: This goal is not applicable.

Statewide Planning Goal 7 – Natural Disasters and Hazards

This goal is intended to protect life and property from natural disasters and hazards.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not have an impact on the compliance with natural disaster and natural hazard regulations.

Conclusion: This goal is not applicable.

Statewide Planning Goal 8 – Recreational Needs

This goal requires that the recreational needs of the citizens of the state and visitors be considered and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not have an impact on the compliance of Statewide Planning Goal #8.

Conclusion: This goal is not applicable.

Statewide Planning Goal 9 – Economic Development:

This goal requires the provision of adequate opportunities for a variety of economic activities.

Analysis: The proposed amendment continues to provide a variety of economic activities (both commercial and residential). In addition, properties that were intended to be developed as commercial only uses will not be required to go through a re-design process in order to comply with the new standards. Mixed use development continues to be an acceptable and encouraged alternative.

Conclusion: This goal is met.

Statewide Planning Goal 10 – Housing:

This goal requires that plans encourage the availability of adequate numbers of needed housing units at various price ranges and rent levels and allow for flexibility of housing location, type and density.

Analysis: The amendment will continue to allow for mixed use and residential only development for these MUR properties, therefore the availability of housing on these properties remains.

Conclusion: This goal is met because the opportunity for housing at various price ranges and rent levels remains the same.

Statewide Planning Goal 11 – Public Facilities and Services

This goal requires planning and development of a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for development. Required public facilities and services are to be provided at levels necessary and suitable for existing uses.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not have an impact on compliance with the Statewide Planning Goal #11.

Conclusion: This goal is not applicable.

Statewide Planning Goal 12 - Transportation

This goal is intended to provide and encourage a safe, convenient and economic transportation system. This Goal is implemented by Oregon Administrative Rule 660-12, which is also known as the Transportation Planning Rule (TPR). Section 660-12-060 states that plan amendments which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not have an impact on compliance with the Statewide Planning Goal #12 and transportation facilities are not altered as a result of this amendment.

Conclusion: This goal is not applicable.

Statewide Planning Goal 13 – Energy Conservation

This goal requires that land and uses developed on land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

Analysis: This goal is not applicable to the proposed Development Code amendment because the amendment does not have an impact on compliance with the energy conservation goals.

Conclusion: This goal is not applicable.

Statewide Planning Goal 14 – Urbanization

This goal requires the orderly and efficient transition from rural to urban land use.

Analysis: This goal is not applicable because the urban growth boundary and transition from urban to rural zoning is not part of the proposed Development Code amendments.

Conclusion: This goal is not applicable.

Statewide Planning Goal 15 – Willamette River Greenway**Required protection, conservation and enhancement of lands along the Willamette River Greenway.**

Analysis: The Washington Square Regional Center is not within the Willamette River Greenway, therefore, this goal does not apply.

Conclusion: This goal is not applicable.

Statewide Planning Goal 16 – Estuarine Resources**This goal requires recognition and protection of unique environmental, economic and social values of each estuary and associated wetlands and, where appropriate, protect, maintain and restore the long-term environmental, economic and social values diversity and benefits of Oregon’s estuaries.**

Analysis: The Washington Square Regional Center does not have any estuaries, therefore, this goal does not apply.

Conclusion: This goal is not applicable.

Statewide Planning Goal 17 – Coastal Shorelands**This goal requires conservation, protection and, where appropriate, restoration of coastal shorelands.**

Analysis: The Washington Square Regional Center is not located at the beach or along a coastal shoreland, therefore, this goal is not applicable.

Conclusion: This goal is not applicable.

Statewide Planning Goal 18 – Beaches and Dunes**This goal requires conservation, protection, and where appropriate, restoration of coastal beaches and dunes.**

Analysis: The Washington Square Regional Center is not located at the beach and there are no dunes within the Regional Center, therefore, this goal is not applicable.

Conclusion: This goal is not applicable.

Statewide Planning Goal 19 – Ocean Resources**This goal requires conservation of the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.**

Analysis: The Washington Square Regional Center is not located at the beach or along a coastal shoreland, therefore, this goal is not applicable.

Conclusion: This goal is not applicable.

FINDING: The proposed amendment is in compliance with all applicable statewide land use goals as documented in the above analysis and conclusions.

B. Any federal or state statutes or regulations found applicable;

The amendment removes the requirement to construct the minimum residential density in the MUR 1 and 2 zones before being permitted to have a commercial component. There are no federal or state statutes that require a mixed use zone to develop with a residential component (while this is encouraged). Regional (Metro) requirements apply and are discussed further in this report.

FINDING: There are no federal or state statutes or regulations applicable to this amendment.

C. Any applicable Metro regulations;

Metro Title 1, which specifies requirements for housing and employment accommodation and Metro Title 7, which discusses affordable housing requirements are applicable to this amendment.

The Washington Square Regional Center Plan was developed in accordance with the policies of Metro's 2040 Growth Concept. In addition, the densities required in the regional center help the City and Washington County to achieve their target population numbers. The removal of density could therefore impact the compliance with the target population numbers. In the case of this amendment, however, it has been determined that the amendment will not result in the City being out of compliance with its target capacity requirements. The City exceeds its target capacity requirements by approximately 200 units. If the MUR properties previously zoned commercial were all developed as commercial only uses, it would result in a loss of approximately 42 units. This calculation takes into account the properties considered vacant or re-developable when the initial capacity calculations were completed. In addition, while this amendment removes the requirement to have a residential use, it does not prohibit a developer from constructing a mixed use or residential only development.

FINDING: The amendment does not bring the City out of compliance with any Metro regulations.

D. Any applicable Comprehensive Plan Policies; and

Policy 1.1.1(a) requires that legislative changes are consistent with statewide planning goals and the regional plan adopted by Metro.

The proposal is consistent with Statewide Planning Goals as addressed above under 'Statewide Planning Goals'. The proposal is consistent with the applicable portions of the Metro "Urban Growth Management Functional Plan" that was adopted in October, 1996, by Metro, as discussed within this report.

Citizen Involvement: Policy 2.1.1 states that the City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process. Policy 2.1.2 states that opportunities for citizen involvement shall be appropriate to the scale of the planning effort.

The Planning Commission and City Council hearings have been legally advertised. Notice has been sent to property owners of affected properties and within 500' of affected properties and has been published in the Tigard Times to ensure that citizens will have the opportunity to learn about the hearing and to participate in it.

Policy 5.1 states that the City shall promote activities aimed at the diversification of the economic opportunities available to Tigard residents with particular emphasis placed on the growth of the local job market.

The proposed amendment continues to provide a variety of economic activities (both commercial and residential). In addition, properties that were intended to be developed as commercial only uses will not be required to go through a re-design process in order to comply with the new standards. Mixed use development continues to be an acceptable and encouraged alternative.

Policy 6.1.1 states that the City shall provide an opportunity for a diversity of housing densities and residential types at various prices and rent levels.

The amendment will continue to allow for residential development for these MUR properties, therefore the availability of housing on these properties remains.

FINDING: Based on the analysis above, the applicable Comprehensive Plan policies have been met.

E. Any applicable provisions of the City's implementing ordinances.

The only applicable City Development Code standard is Chapter 18.380 which regulates amendments. While 18.520 will be amended, there are no specific criteria in this section that needs to be reviewed in order to make this decision. The Tigard Development Code Section 18.380 outlines the process for reviewing Development Code Text Amendments.

FINDING: This staff report and the findings herein show that all applicable provisions of the Tigard Development Code have been addressed and are met with the proposed amendment.

SECTION VI. ADDITIONAL CITY STAFF AND OUTSIDE AGENCY COMMENTS

City of Tigard Current Planning Division, City Administration, Planning and Engineering Technicians, City of Beaverton, Metro Land use and Planning Growth Management, DLCD, The Oregon Department of Transportation, and Washington County have all had an opportunity to review this proposal and have offered no comments or objections to the proposed zone change.

PREPARED BY: _____ Julia Hajduk Associate Planner	_____ June 24, 2002 DATE
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SIGNED: _____ Mark Padgett Planning Commission Chair	_____ DATE
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**TABLE 18.520.1
USE TABLE: COMMERCIAL ZONES**

USE CATEGORY	C-N ¹	C-C ⁵	C-G	C-P	CBD	MUE ²⁰	MUC-1	MUC ²⁸	MUE 1 and 2 ²⁸	MUR 1 and 2 ²⁸
RESIDENTIAL										
Household Living	N	R ⁶	R ¹¹	R ¹³	R ¹⁷	R ²¹	P ²⁶	P	P	P
Group Living	N	N	C	N	P	N	C	R ²⁹ /C	R ²⁹ /C	R ²⁹ /C
Transitional Housing	N	N	C	N	C	N	C	C	C	C
Home Occupation	R ²	R ²	R ²	R ²	R ²	R ²	P	R ²	R ²	R ²
HOUSING TYPES										
Single Units, Attached	N/A	N/A	N/A	N/A	N/A	N/A	N/A	R ³⁰	R ³⁰	P
Singel Units, detached	N/A	N/A	N/A	N/A	N/A	N/A	N/A	R ³⁰	R ³⁰	R ³⁰
Accessory Units	N/A	N/A	N/A	N/A	N/A	N/A	N/A	R ³¹	R ³¹	R ³¹
Duplexes	N/A	N/A	N/A	N/A	N/A	N/A	N/A	R ³⁰	R ³⁰	P
Multi-family Units	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P	P	P
Manufactured Units	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N	N	N
Mobile Home Parks, Subdivisions	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N	N	N
CIVIC (INSTITUTIONAL)										
Basic Utilities	C	N	N	C	C	C	C	C ³²	C ³²	C ³²
Colleges	N	N	N	N	N	C	C	C	C	C
Community Recreation	N	P	N	N	P	C	N	P	C	C
Cultural Institutions	P	P	P	P	P	P	P	P	P	N
Day Care	P	P	P	P	P	P	P	P	P	P/C ³³
Emergency Services	P	P	P	P	P	P	P	P	P	N
Medical Centers	C	N	C	C	C	C	C	C	C	C
Postal Service	P	P	P	P	P	P	P	P	P	N
Public Support Facilities	P	P	P	P	P	P	P	P	P	P
Religious Institutions	C	C	P	C	P	P	C	P	P	C
Schools	N	N	N	N	N	C	C	C	C	C
Social/Fraternal Clubs/Lodges	C	C	P	P	P	P	P	P	P	C
COMMERCIAL										
Commercial Lodging	N	N	P	R ¹⁴	P	P	P	P	P	N
Eating and Drinking Establishments	C	P	P	R ¹⁵	P	P	P	P	P	R ^{34/35}
Entertainment-Oriented										
- Major Event Entertainment	N	N	C	N ¹⁵	C	N	C	C	N	N
- Outdoor Entertainment	N	N	P	R ¹⁵	P	N	N	C	N	N
- Indoor Entertainment	P	P	P	P	P	P	P	P	P	N
- Adult Entertainment	N	N	C	N	C	N	N	C	N	N
General Retail										

Proposed MUR-1 and MUR-2 code changes

- Sales-Oriented	P	P ⁷	P	R ¹⁶	P	R ²²	R ²⁵	P	R ²²	R ^{34/35}
- Personal Services	P	P	P	P	P	R ²²	R ²⁵	P	R ²²	R ^{34/35}
- Repair-Oriented	P	P	P	N	P	R ²²	R ²⁵	R ²²	R ²²	N
- Bulk Sales	N	N	P	N	N	R ²²	R ²⁵	R ²²	R ²²	N
- Outdoor Sales	N	N	P	N	N	N	N	N	N	N
- Animal-Related	N	N	N	N	N	P	P	N	N	N
Motor Vehicle Related										
- Motor Vehicle Sales/Rental	N	N	P/C ¹²	N	C	N	N	R ²⁴	R ²⁴	N
- Motor Vehicle Servicing/Repair	N	C ⁸	P/C ¹²	N	R ¹⁸	R ²²	R ²⁵	N	N	N
- Vehicle Fuel Sales	C	C	C	N	C	N	C	C	C	N
Office	P	R ⁹	P	P	P	P	P	P	P	R ^{34/35}
Self-Service Storage	N	N	C	N	N	N	N	N	N	N
Non-Accessory Parking	C	C	P	P	P	P	P	P	P	N
INDUSTRIAL										
Industrial Services	N	N	N	N	N	N	N	N	N	N
Manufacturing and Production										
- Light Industrial	N	N	N	N	N	R ²³	N	N	R ²³	N
- General Industrial	N	N	N	N	N	N	N	N	N	N
- Heavy Industrial	N	N	N	N	N	N	N	N	N	N
Railroad Yards	N	N	N	N	N	N	N	N	N	N
Research and Development	N	N	N	N	N	R ²⁴	R ²⁴	N	R ²³	N
Warehouse/Freight Movement	N	N	N	N	N	R ²⁴	N	N	R ^{23/24}	N
Waste-Related	N	N	N	N	N	N	N	N	N	N
Wholesale Sales	N	N	N	N	C	N	N	N	R ^{23/24}	N
OTHER										
Agriculture/Horticulture	N	N	N	N	N	N	N			
Cemeteries	N	N	N	N	N	N	N			
Detention Facilities	N	N	C	N	C	N	N			
Heliports	N	N	C	C	C	N	N			
Mining	N	N	N	N	N	N	N			
Wireless Communication Facilities	P/R ³	P/R ³	P/R ³	P/R ³	P/R ³	P/R ³	P/R ²⁷			
Rail Lines/Utility Corridors	P	P	P	P	P	P	P			
Other	C ⁴	C ¹⁰	NA	NA	C ¹⁹	NA	NA			
P=Permitted R=Restricted C=Conditional Use N=Not Permitted										

Proposed MUR-1 and MUR-2 code changes

¹All permitted and conditional uses subject to special development standards contained in 18.520.050A.

²Permitted subject to requirements Chapter 18.742.

³See Chapter 18.798 Wireless Communication Facilities, requirements for permitted and restricted facilities.

⁴Uses operating before 7:00 AM and/or after 10:00 PM are conditional uses.

⁵All permitted, limited and conditional uses must meet special development standards in 18.520.050B.

⁶Residential units permitted by right, as a mixed use in conjunction with a commercial development, on or above the second floor of the structure, at densities not to exceed 12 units/net acre.

⁷Limited to 10,000 gross square feet in size, except retail food and beverage outlets, which are limited to 40,000 gross square feet or less.

⁸Limited to motor vehicle cleaning only.

⁹When combined in single structure, each separate establishment shall not exceed 5,000 gross square feet.

¹⁰Uses operating before 6:00 AM and/or after 11:00 PM; or drive-up windows are conditional uses.

¹¹A single-family unit providing that it is located on the same site with a permitted or conditional use in and is occupied exclusively by a caretaker or superintendent of the permitted or conditional use. Multi-family housing is permitted as part of a PD, subject to Chapter 18.350.

¹²Cleaning, sales and repair of motor vehicles and light equipment is permitted outright; sales and rental of heavy vehicles and farm equipment and/or storage of recreational vehicles and boats permitted conditionally.

¹³Multi-family residential units, developed at R-40 standards, as a mixed-use in conjunction with commercial development on or above the second floor of the structure, only in the C-P District within the Tigard Triangle and Bull Mountain Road district.

¹⁴Restaurant permitted with restriction in size in conjunction with and on the same parcel as a commercial lodging use.

¹⁵As accessory to offices or other permitted uses, the total space devoted to a combination of retail sales and eating/drinking establishments may not exceed more than 20% of the entire square footage within the development complex.

¹⁶May not exceed 10% of the total square footage within an office complex.

¹⁷Single-family attached and multi-family residential units, developed at R-40 standards, except the area bounded by Fanno Creek, Hall Boulevard, O'Mara, Ash Avenue and Hill Street, within

which property zoned for CBD development which shall be designated R-12 PD and shall be developed as planned developments in conformance with the R-12 District standards.

¹⁸Motor vehicle cleaning only.

¹⁹Drive-up windows permitted conditionally.

²⁰All permitted and conditional uses subject to special development standards contained in 18.520.050C.

²¹Multi-family residential, at 25 units/gross acre, allowed outright. Pre-existing detached single-family dwellings are permitted outright.

²²New Retail and sales uses may not exceed 60,000 gross leasable area per building within the Washington Square Regional Center or Tigard Triangle, except for those areas zoned C-G at the time the MUE zoning district was adopted in the Tigard Triangle.

²³All activities associated with this use, except employee and customer parking, shall be contained within buildings.

²⁴Permitted as accessory to a permitted use as long as this use is contained within the same building as the permitted use, and does not exceed the floor area of the permitted use.

²⁵Permitted provided the use is no larger than 60,000 square feet of gross floor area per building or business.

²⁶Household living limited to single units, attached, and multi-family including but not limited to apartments, attached condominiums, townhouses and rowhouses at a minimum density of 25 dwelling units per acre and a maximum density of 50 dwelling units per acre.

²⁷Wireless only as attached to structure within height limit – see Chapter 18.798

²⁸All Permitted and Conditional Uses subject to special development standards contained in 18.630

²⁹Group living with five or fewer residents permitted by right; group living with six or more residents permitted as conditional use.

³⁰Pre-existing housing units permitted. Conversion of pre-existing housing units to other uses is subject to the requirements of Chapter 18.630

³¹Permitted for pre-existing housing units, subject to requirements Chapter 18.710.

³²Except water, storm and sanitary sewers, which are allowed by right.

³³In-home day care which meets all state requirements permitted by right; freestanding day care centers which meet all state requirements permitted conditionally.

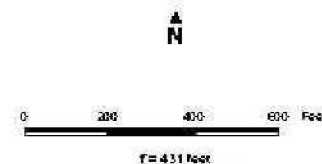
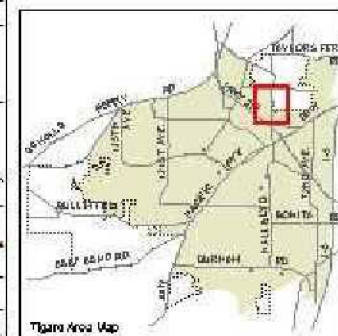
³⁴This use is allowed only in mixed-use developments in the Washington Square Regional Center. Commercial uses shall occupy no more than 50% of the total floor area within the mixed-use development, and shall be permitted only when minimum residential densities are

met. An exception to the requirement that commercial uses may be permitted only if residential minimum densities are met is provided for properties zoned commercial prior to implementation of the Washington Square Regional Center Plan (3/28/2002). The exempted properties are identified as assessor map number: 1S135AA-00400, 1S135AA-01400, 1S135AA-01900, 1S1AA-01901, 1S135DA-02000, 1S135AA-02500, 1S135AA-02600, 1S135AA-02700, 1S135DA-01900, and 1S1DA-02000. These parcels, or parcels created from these parcels, after the effective date of this ordinance, may be developed as a solely commercial use with a use permitted in the MUR-1 or MUR -2 zones.

³⁵The maximum building footprint size permitted for any building occupied entirely by a commercial use or uses shall be 7,500 square feet. An exception to the limit on the size of a building occupied by commercial uses is provided for properties zoned commercial prior to implementation of the Washington Square Regional Center Plan (3/28/2002). The exempted properties are identified as assessor map number: 1S135AA-00400, 1S135AA-01400, 1S135AA-01900, , 1S1AA-01901, 1S135DA-02000, 1S135AA-02500, 1S135AA-02600, 1S135AA-02700, 1S135DA-01900, and 1S1DA-02000. On these parcels, or parcels created from these parcels, after the effective date of this ordinance, a commercial development is not limited to a specific square footage, however, all other dimensional standards of the MUR-1 and MUR-2 zoning district apply which may limit the ultimate size of commercial development.



VICINITY MAP



Information on this map is for general location only and should be verified with the Development Services Division.
13126 SW Hall Blvd
Tigard, OR 97223
(503) 630-4171
<http://www.ci.tigard.or.us>

**CITY OF TIGARD
PLANNING COMMISSION
Meeting Minutes
June 17, 2002**

1. CALL TO ORDER

President Padgett called the meeting to order at 7:00 p.m. The meeting was held in the Tigard Civic Center, Town Hall, at 13125 SW Hall Blvd.

2. ROLL CALL

Commissioners Present: President Padgett; Commissioners Anderson, Bienerth, Munro, Sclar, Sutton, and Webb

Commissioners Absent: Commissioners Buehner and Mores

Staff Present: Julia Hajduk, Associate Planner; Dan Plaza, Parks Manager; Duane Roberts, Associate Planner; Jaimie Dumdi, Administrative Specialist; Jerree Gaynor, Planning Commission Secretary

3. PLANNING COMMISSION COMMUNICATIONS

Next meeting will be July 15th.

4. PUBLIC HEARING

4.1 ZONE ORDINANCE AMENDMENT (ZOA 2002-00003)

MIXED USE RESIDENTIAL (MUR 1 & 2) DEVELOPMENT CODE AMENDMENTS

REQUEST: The request is to modify the existing development code language to exempt properties that were zoned commercial prior to March 28, 2002 from being required to meet minimum residential density requirements prior to being permitted to have a commercial use on the property. There are 10 parcels (5.25 acres) within the City of Tigard's portion of the Regional Center that this exemption applies to and are impacted by this amendment. Approximately 1.63 acres were identified as vacant or re-developable in determining target capacity numbers for the Regional Center, therefore, the number of units that would be lost if no residential use were constructed on these lots is approximately 42 units (if minimum densities were constructed). **LOCATION:** The Washington Square Regional Center area is bounded generally by Fanno Creek on the west, SW Greenburg Road and Hall Boulevard on the east, Red Tail Golf Course to the north, and Highway 217, including the Ash Creek area on the southern border. The MUR 1 and 2 zones are located within the Regional Center, generally west of Hall Blvd and east of Ash Creek. **ZONE:** Mixed Use Residential (MUR) 1&2. **APPLICABLE REVIEW CRITERIA:** Community Development Code Sections 18.380.020, 18.390.060; Comprehensive Plan Policies 1.1.1, 2.1.1 2.1.2, 5.1 and 6.1.1; Statewide Planning

Goals 1, 2, 9, and 10; and Metro Functional Plan Titles 1 and 7.

STAFF REPORT

Julia Hajduk presented the staff report on behalf of the City. Testimony received at the City Council hearing raised concern that there are properties previously zoned commercial prior to adoption of the Regional Center Plan that would be negatively impacted by the new Mixed Use Residential zone designation. This amendment proposes an exemption for only those properties that were previously zoned commercial so that they do not have to meet the residential component in order to be developed commercially. While not required to build to the minimum residential density, they are encouraged to have a mixed used development and must still meet all other Regional Center standards. Target capacity numbers will continue to be met and therefore staff recommends the Planning Commission forward a recommendation of approval to City Council.

In response to inquiry from President Padgett, Ms. Hajduk clarified that this exemption applies only to properties that are now zoned mixed use residential but were previously zoned commercial, regardless of whether or not they are developed or vacant, i.e., parcels ready to be commercially developed as well as parcels already developed with commercial uses.

PUBLIC TESTIMONY

None

PUBLIC HEARING CLOSED

Commissioner Webb moved that, based upon the findings in the staff report, the Planning Commission recommend to the City Council to approve ZOA 2002-00003. Commissioner Sclar seconded the motion. A voice vote was taken and the motion passed unanimously.

4.2 BONITA PARK MASTER PLAN

Dan Plaza gave a PowerPoint presentation on the Bonita Park Master Plan (Exhibit A). This is a 5-acre site located on Milton Court off Bonita Road by 74th Avenue. Staff recommends the Planning Commission forward a recommendation of approval to City Council. The City Council will consider the plan at its next meeting on July 8, 2002.

Discussion items:

- CDBG (Community Development Block Grants) provide funding for underprivileged areas.
- Staff is comfortable that public input has been satisfied. The site is small and contains wetland areas and a buffer zone along the creek that limit what can be developed on it. A picnic shelter may be added in the future.

- The playground area will not be secluded by a ring of tall trees. Due to input from the Police Department, it may be moved further south than what is depicted in this plan in order to increase visibility.
- The City Forester will develop the tree plan.
- A nice portable restroom facility will likely be installed.
- Native landscaping, street lighting, and visibility will be emphasized.
- Milton Court has adequate parking on both sides. The other side of Milton Court is zoned commercial.
- Through Metro, the City has use of 13 acres of green space to north.
- Bike racks will be installed.
- Nine-foot basketball rings are discouraged due to damage caused by dunking.

PUBLIC TESTIMONY

None

PUBLIC HEARING CLOSED

Commissioner Munro moved that, based upon the presentation by staff, the Planning Commission recommend to the City Council to adopt the Bonita Park Master Plan, incorporating comments heard from the Planning Commission at this meeting. Commissioner Bienerth seconded the motion. A voice vote was taken and the motion passed unanimously.

4.3 SUMMERLAKE PARK MASTER PLAN

Dan Plaza gave a PowerPoint presentation on the Summerlake Park Master Plan (Exhibit B).

Discussion items:

- There is a very active dog park committee and maintenance of grass in the dog and other areas is not anticipated to be a problem. The grass will likely need to be restored after five years. Staff will check into whether there is a specific type of grass that would be more suitable for the dog area.
- Development of the water areas will be reviewed by the City's risk department. The final plan will be reviewed by the City's insurer.
- Native plantings and low or no irrigation is encouraged.
- Construction of the project will be phased over two years, but the order in which specific areas are developed has not been prioritized. The playgrounds and picnic shelters are likely to be developed first.

PUBLIC TESTIMONY IN FAVOR

Michael Cox, 16697 SW 108th Ave., Tigard, OR 97224 – is a dog owner and member of the dog park committee. The 8-person committee is very committed to maintenance of the park through volunteers. Park users will be encouraged keep dogs on-leash—use off-leash area. Numerous steps have been implemented to maintain cleanliness and park aesthetics. He supports the plan.

Chris Garsteck, 11774 SW 125th Ct., Tigard, OR 97223 – lives in Summerlake Park area and member of the dog park committee. The City park master plan shows a need for three dog parks in Tigard. A survey at last year's balloon festival showed 90% of citizens are in favor of an off-leash dog park. She recommends approval of this plan with an off-leash dog park area. Dog Park volunteers are working with Susan Koepping to coordinate park maintenance efforts.

Steven Topp, 12566 SW Bridgeview Ct., Tigard, OR 97223 – lives in Winterlake area—area residents are in favor of the park plan as proposed. A skateboard park is not suitable for this area.

Michelle Sittel, 17085 SW Eldorado, Tigard, OR 97224 – member of dog park committee – testified in support of the Summerlake Park Plan as proposed.

Jonathan Male, 12910 SW Winter Lake Dr, Tigard, OR 97223 – signed up to speak, but chose not to.

Christie Smith, 11320 SW Ambiance Ct., Tigard, OR 97223 – signed up to speak, but chose not to.

Gene McAdams, 13420 SW Brittany, Tigard, OR 97223 – wants the record to show that the citizens who participated in development of this plan recommended against the skate park and the BMX facility. These facilities are not suitable to the nature of this park; the space required would diminish the beauty and benefits of the park. It would be helpful if the square footage of the maintenance building were specified. He recommends that the building blend into the park in a harmonious fashion. Endorses open space in the park.

The Planning Commission noted that limited resources will ensure that the building will not be any larger than is necessary.

PUBLIC TESTIMONY IN OPPOSITION

None

PUBLIC HEARING CLOSED

Discussion items:

- The Planning Commission endorses open spaces in the park.

- The off-leash dog area in front of the maintenance building will help to screen the building. A road on the west side of parking lot goes through the trees to access the facility.
- Use native plantings as much as possible.
- Have some areas that have no or low irrigation needs.
- Use a more hardy grass for the dog area.

Commissioner Bienerth moved that, based upon the presentation by staff and testimony heard at this hearing, the Planning Commission recommend to the City Council to adopt the Summerlake Park Master Plan, incorporating comments heard at this meeting. Commissioner Anderson seconded the motion. A voice vote was taken and the motion passed unanimously.

5. OTHER BUSINESS

None

6. ADJOURNMENT

The meeting adjourned at 8:15 p.m.

Jerree Gaynor, Planning Commission Secretary

ATTEST: President Mark Padgett

AGENDA ITEM # _____
FOR AGENDA OF 8/27/02

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Bull Mountain Annexation Policy Direction

PREPARED BY: Jim Hendryx DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Over the past year the City has explored the possibility of annexing the Bull Mountain area. Based on these efforts, three non-island annexation policy alternatives were developed and presented to Council on August 20, 2002. The Council will consider a resolution establishing the annexation strategy on August 27, 2002.

STAFF RECOMMENDATION

That Council decide to pursue one of the three alternatives and adopt a resolution directing its implementation. Suggested language for the resolution will be drafted following the August 20, 2002, meeting and forwarded to Council members before the August 27th meeting.

INFORMATION SUMMARY

In 2001, the Tigard City Council established a goal to develop an annexation policy for non-island areas, such as Bull Mountain, and directed staff to study the feasibility of annexing the Bull Mountain area. Since July 2001, the City has been exploring annexation of the Bull Mountain area through a focus group with residents, a study, an open house with residents, and most recently, a phone survey. The City hired Riley Research Associates to poll both Bull Mountain and Tigard residents to determine their attitudes on issues related to annexation and methods of annexation, including an annexation plan.

This information has been used in the development of three non-island annexation policy alternatives: 1) An annexation plan, which provides a plan for the sequence of annexation, local standards of service, a schedule of providing urban services, the effect on existing urban service providers, and long-term benefits of annexation; 2) Implementation of selected programs, which would develop a specific annexation policy and program addressing targeted issues such as open space and UGB expansion; 3) Continuation of the existing approach, which does not require annexations but assists property owners if they wish to annex.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Growth and Growth Management Goal #2, Urban services are provided to all citizens within Tigard's urban growth boundary and recipients of services pay their share.

ATTACHMENT LIST

N/A

FISCAL NOTES

N/A

Agenda Item No.: 14
Meeting of: August 27, 2002

The Resolution related to

Bull Mountain Annexation

will be available in hard copy by Friday, August 23, 2002 and will
be delivered to City Council in their Friday mail packet

Contact the City Recorder's Office at 503-639-4171
for more information

AGENDA ITEM # _____
FOR AGENDA OF August 27, 2002

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Washington County Urban Services Agreement

PREPARED BY: Jim Hendryx DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should Council renew the Intergovernmental Agreement (IGA) with Washington County to provide planning, building, and engineering related services to the Urban Services Area?

STAFF RECOMMENDATION

It is staff's recommendation that Council authorize the Mayor to sign the Urban Services Intergovernmental Agreement between City of Tigard and Washington County, amending and extending the agreement for another 5 years.

INFORMATION SUMMARY

Washington County and Tigard entered into an Urban Services Agreement in May of 1997. The agreement initially provided for the City to provide for development related planning, building, engineering services, and street maintenance activities. The agreement was subsequently amended, eliminating Tigard provision of street maintenance activities. The latest agreement includes amendments reflecting current procedures and operating practices and addresses the issue of collection of Park System Development Charges (SDCs) in the event the City decides to do an annexation plan for the Urban Services Area and the voters approve the plan. This provision would provide for SDC collections between the time the voters approve the plan and the time the area is officially annexed into the City of Tigard. The revised agreement further clarifies that the County is responsible for routine street maintenance while contracting with the City to provide surface maintenance (overlays, etc.).

The terms of the agreement remained in effect for 5 years and the agreement expired May 12, 2002. It was extended until September 9, 2002. By mutual agreement the contract may be terminated at any time. Unilateral termination can only occur between the dates of March 1st and July 1st of any year, with 90 days written notice to the other party.

OTHER ALTERNATIVES CONSIDERED

Terminate the agreement, as provided for in Section V.A. of the Intergovernmental Agreement with Washington County.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Growth and Growth Management, Goal #2) Urban services are provided to all citizens within Tigard's urban growth boundary and recipients of services pay their share; Strategy #1 Adopt criteria that outlines when and under what circumstances areas on Bull Mountain will annex. Action Plans:

- Provide targeted education program aimed at newcomers and specific Bull Mountain areas
- Reach agreement with Wash. County that allows full provision of services by City including police service and annexation.
- Expand ability to get annexation waivers for provision of sewers to Bull Mountain.
- Create agreement with County that establishes under what conditions City will accept County facilities.

ATTACHMENT LIST

Attachment 1 – Urban Services Agreement

FISCAL NOTES

The program is fee supported.

URBAN SERVICES INTERGOVERNMENTAL AGREEMENT

BETWEEN

CITY OF TIGARD AND WASHINGTON COUNTY

This agreement is entered into this ____ day of _____, 2002, by WASHINGTON COUNTY, hereinafter "COUNTY" and the CITY OF TIGARD, hereinafter "CITY", both political subdivisions of the State of Oregon.

WHEREAS, ORS 190.007 provides for the furthering of economy and efficiency in local government and that intergovernmental cooperation is a matter of state wide concern; and

WHEREAS, ORS 190.010 provides that units of government may enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, Article IV(B)(2) of the Urban Planning Area Agreement called for a study of the transfer of responsibility for certain urban services from the COUNTY to the CITY to determine the cost effectiveness and feasibility of this transfer; and

WHEREAS, the COUNTY and the CITY believe it is in the best interest of efficiency and economy to transfer responsibility of certain services to the local unit of government consistent with the objectives of ORS 195;

WHEREAS, the COUNTY and the City entered into an urban services IGA dated May 12, 1997 and now wish to update that agreement;

WHEREAS, this agreement provides for a newly designed method to provide governmental services, is unique to the parties, and is subject to amendment; it is not intended to be used as a model agreement for other jurisdictions;

NOW, THEREFORE, THE COUNTY AND THE CITY AGREE AS FOLLOWS:

I. AREA AFFECTED BY AGREEMENT

A. The area affected by the intergovernmental agreement is defined by Exhibit "I" to this agreement and is hereinafter referred to as the "area."

II. DELEGATION OF AUTHORITY

A. The COUNTY agrees to delegate to the CITY any and all additional authority that it possesses and which is needed by the CITY to carry out planning, development, road functions and other related activities within the area. The effective date and terms of the delegation of authority are as provided for in this agreement. Among the actions to be authorized pursuant to this provisions will be:

1. Provision of planning information to applicants for development review for all land development proposed for the area.
2. Performance of pre-application conferences.
3. Preparation of staff reports and performance of site visits for pending applications.
4. Coordination and provision of public notice of land use applications.
5. Collection of fees pertaining to development applications, building permits right-of-way use fees, systems development charges and traffic impact fees.
6. Presentation of staff recommendations pertaining to land use proposals at public hearings.
7. Preparation of administrative decisions for those applications that do not require public hearings, in keeping with the Tigard Community Development Code.
8. Conducting of public hearings before the land use approval authority as provided by the Tigard Community Development Code.
9. Conducting of appeal hearings before the land use approval authority as provided by the Tigard Community Development Code.
10. Preparation of final orders for all final decisions made pursuant to this agreement.
11. Representing the CITY in any appeal of a decision made by the CITY

under this agreement to LUBA or any other court and representing the CITY in mandamus actions or any other actions in state or federal court.

12. Review of construction activities related to development approvals granted pursuant to this agreement for compliance with conditions of development approval.

13. Coordination with engineering and other appropriate staff for review and approval of public facilities related to development application and construction.

14. Interpretation of the applicable comprehensive plan and implementing regulations for the area.

15. Exercise of subdivision authority within the area.

16. Processing and issuance of building permits for all construction activities within the area. Performance of all building inspecting and enforcement relating to permits issued.

17. Surface maintenance and improvements of roads within the area; all other routine maintenance shall be provided by County.

18. Issuance of all access permits and right of way use and right-of-way construction permits for the area.

19. Enforcement of code and permit violations including:

- a. Development and zoning violations
- b. Building code violations
- c. Conditions of approval violations
- d. Right of way permit violations
- e. Road and street hazards

20. Reviewing OLCC and DMV land use compatibility statements.

21. Collection of Park System Development Charges pursuant to the provisions of Exhibit 7.

III. RESPONSIBILITIES OF THE PARTIES

A. General Terms Regarding Responsibilities of the Parties.

It is the intention of the parties hereto that there be no cost to the CITY in the undertaking of the responsibilities under this agreement. As to operational costs, the fee schedule

adopted for development review and building permit services is intended to fully cover all direct and indirect costs to the CITY associated with development review and building permit functions.

As of the date of this Agreement, the parties contemplate that there are three broad areas of cost of service in the Area which is the subject of this agreement. Those areas of cost are:

1. operational expenses,
2. defense of litigation, administrative and LUBA appeals occasioned by development review and engineering review of development; and
3. liability under tort, constitutional and related theories.

It is the intent of the parties that the CITY will be fully compensated for operational expenses relating to this Agreement through application fees collected by the City or by funds transferred from the County. The remaining two described cost areas to the CITY will be analyzed as provided in Section (IV)(B) and (VI).

B. The County agrees to perform the following activities as part of this intergovernmental agreement:

1. Transfers of all special fund allocations to the CITY for specific services denoted in this agreement shall be made in accordance with the provisions of Exhibit 3. Any interest accrued by the CITY shall be used in furtherance of delivering such specific services. In the event of funding short falls for operational expenses arising out of the CITY's assumption of obligations under this agreement, the provisions of paragraph IV(A)(1) shall govern the transfer of additional funds to the CITY by the COUNTY.
2. Any service under this agreement provided by CITY that requires payment by COUNTY to CITY for such service shall only be required of the CITY as long as COUNTY makes the payments to CITY as required by this agreement. This agreement shall terminate if COUNTY is unable to make payments to CITY required under this agreement due to reductions in the COUNTY budget.
3. Provide as needed technical assistance to the CITY to assist in those services requiring COUNTY expertise. Such technical assistance shall be delivered to the CITY at no charge and in a timely manner. More specifically, the COUNTY agrees to provide technical assistance in development review to assist the CITY's Community Development Department render appropriate land use decisions including "areas of special concern" and floodplain/drainage hazard areas, as defined in the COUNTY's Bull Mountain Community Plan.
4. Provide coordination with the CITY in updating and development of the COUNTY's transportation capital improvement program.
5. Adopt provisions of Tigard's Municipal Code, allow the use of certain City engineering standards (e.g., street width, curb type, sidewalk location), and other City rules that are necessary for the CITY to have authority to fulfill the delegation provisions listed under section II of this agreement.

6. If at a quarterly meeting, it is determined that the COUNTY fee schedule is not adequate to compensate CITY for services performed, upon presentation of adequate documentation to this effect, COUNTY shall adjust its fee schedule for the area to attempt to cover the cost of the service. In addition, the cost recovery provisions of paragraph IV(A) shall apply consistent with the intent that there be no net loss to the CITY for operational expenditures under this agreement.

C. The CITY agrees to perform the following activities as part of this intergovernmental agreement:

1. Perform land development services (development assistance development review) on a daily basis consistent with the CITY Community Development Code as adopted by the COUNTY.
2. Perform building inspection services (plan review, electrical, plumbing, mechanical, structural) on a daily basis consistent with the state law and the CITY code as adopted by the COUNTY.
3. Utilize the COUNTY'S street standards or those City standards agreed to by COUNTY in evaluating public and private development and/or projects in the area. The County Engineer shall approve the standards to be used during plan review.
4. Perform surface maintenance work for County and public roads and receive payment for such work from County and Urban Road Maintenance District (URMD), as described in Exhibit 2 and 3.
5. Perform road capital improvements and receive payment for such improvements from Traffic Impact Fees, as described in Exhibit 4.
6. Perform code enforcement services on a daily basis consistent with the CITY codes as adopted by the County and receive payment for such enforcement, as described in Exhibit 5.
7. As of the date of this agreement, CITY shall impose a condition upon any applications which requires street lighting, that the applicant will agree to the formation of a Street Lighting District.
8. Take responsibility for and complete inspections and reviews for all existing building permits and complete review of all development permit applications (including requests for extensions on existing permits) that are filed after the effective date of this agreement and receive payments, as described in Exhibit 6.
9. Collect all pertinent fees and taxes relevant to building permits, traffic impact tax, sign permits, right-of-way use permits, sign permits and development application fees. CITY shall apply its own fee schedules for all engineering, development, and building permits. CITY may adopt revised fee schedules as necessary to fully recover costs for providing services. CITY shall retain all fees it collects for its services.

COUNTY shall continue to collect Maintenance Local Improvement District (MLID) and URMD assessments for this area and transfer them as provided for in this agreement under Exhibit 2.

10. All other actions reasonably necessary to carry out the authority given to CITY as provided for in the attached Exhibits.

IV. OPERATING PROCEDURES AND RELATIONSHIPS

The COUNTY and CITY agree:

A. Operational Expenses.

It is expected that the City will adjust its fees as necessary over time to cover its operating costs. If those funds transferred or fees gathered are not sufficient to pay for the services required by this agreement, the COUNTY shall reimburse CITY for any deficiency remaining at the end of each year. Such reimbursement shall be in accordance with the provisions of Exhibit 3. To be eligible to receive such payments for the deficiency, the CITY is required to:

1. Meet annually with COUNTY and give accounting records of the CITY's fund for these services that describe the cost of services and the revenues generated during the year. CITY shall also make estimates about levels of services, staffing requirements and revenue projections for the next year. The annual meetings shall aid in determining the fund transfers that are set in the annual meeting as described below.
2. Maintain a separate fund and detailed accounting records for each functional area and funding source covered by this agreement.
3. Be in compliance with all other provisions of this agreement.

B. Defense of Appeals/Liability

As described in paragraph II(A)(11) above, it is contemplated by the parties that LUBA or other court actions may arise from the review of development in the area subject to this agreement. The CITY will undertake responsibility for defense of such actions. The cost of such defense will be borne by either the CITY or the COUNTY or a combination thereof as provided for in this paragraph.

1. When the CITY receives notice from any party that a LUBA appeal, court action or other legal review of the CITY's authority is contemplated by that party, the CITY Community Development Director shall immediately notify the COUNTY Land Use and Transportation Director in writing. The Directors or their designee(s) shall confer to determine the source and nature of the requirement resulting in the disputed and the CITY's decision on whether or not to defend the action. The COUNTY shall have 10 days from the date of the CITY's notice in which to decide whether it wants the CITY to proceed in the defense of such action. If the COUNTY requests that the CITY proceed to defense where the CITY would otherwise elect not to do so, the COUNTY will fully reimburse the CITY for all costs of defense including direct and indirect costs. Similarly, if the

CITY believes it is important to proceed the defense where the COUNTY does not concur, the CITY will absorb the cost. In cases where both parties believe it is important to defend an action, the parties will share equally the cost of defense. The same process shall apply in all subsequent appeals from the LUBA or court decision. In all other cases, the parties will resolve the dispute over cost using the dispute resolution methods contained in this agreement. The parties here recognize that the intent is that the party creating the cost should bear responsibility for that cost.

2. For constitutional takings claims and inverse condemnation claims, including civil rights actions alleging a taking County shall indemnify City for City's acts or omissions to a maximum aggregate amount of \$500,000 on a "claims-made" basis. Claims must arise from acts or omissions occurring during the term of this Agreement and be actually received no later than two years after termination of this Agreement. This shall include defense costs, attorney fees and any settlements or judgments. Indemnification shall be on a 50/50 basis with the City participating in the first dollar of defense costs and any judgment or settlement, including attorney fees. In no event shall either party be responsible for any punitive damages awarded against the other party, its officers, employees or agents.

In the event any portion of the area covered by this Agreement annexes, County's obligation under this paragraph shall cease as to any claims arising from the annexed area after annexation is final. County shall bear full responsibility for claims resulting from its approval of development prior to the effective date of this Agreement.

3. Consistent with the hold harmless provisions of paragraph VI, it is the parties' intention that each be responsible for liability arising out of its own employees' acts.

4. On July 1, 1997, County shall create a \$500,000 insurance reserve fund or account dedicated exclusively to satisfying its obligations under paragraph (2) above. In no event shall County be responsible for any costs, damages, judgments, settlements, or attorney fees arising from or relating to the acts or omissions of City except to the extent of the remaining balance of this reserve. Notwithstanding termination of this Agreement, this reserve shall continue until either of the following occurs: The fund balance is expended in defense or on behalf of City as described in paragraph (2) above or all claims against City filed within two years of termination of this Agreement are finally resolved and paid.

Each fiscal year, County staff shall make a recommendation to the Board regarding availability of funds to replenish the reserve and the Board shall seriously consider such action. City may terminate this Agreement on 90 days' notice if County declines to replenish the reserve in any future budget year.

5. City shall confer with County at the first opportunity if City has reason to think that a land use application or decision of City is likely to be contested beyond the City's internal review process or may give rise to a claim for damages.

C. Dispute Resolution.

To the extent possible, COUNTY and CITY staff will observe the rules, standards and regulation reference by this agreement. In the case of a dispute about the terms of this agreement or how to effectuate this agreement, the COUNTY and CITY staff will immediately refer the dispute to the COUNTY Director of Land Use and Transportation and the CITY Community Development Director to resolve the dispute. If the Directors have not resolved the dispute within 30 days, the dispute shall be forwarded to the CITY and COUNTY Administrators. If the matter cannot be resolved by the Administrators within 30 days, it shall be forwarded to the Council and the Board for resolution. If the matter still cannot be resolved, the arbitration provisions of ORS 190.710-190.800 shall apply.

D. Amendments.

Requested amendments to this intergovernmental agreement shall be submitted in writing to both the COUNTY Land Use and Transportation Director and to the CITY Community Development Director with adequate explanations as to the necessity of such amendment. A decision by the Directors to either reject or accept the amendments must be made in no more that 30 days from the receipt of the request. After review and approval by the Directors, the amendments must be submitted to the CITY Manager and COUNTY Administrator for signature or presentation to the Board and Council.

The CITY Council and the COUNTY Board of County Commissioners grant authority to the CITY Manager and the COUNTY Administrator to make such changes as needed to this intergovernmental agreement to effectuate the intent and purpose of this agreement. For amendments that will result in a financial impact, the amount of the financial impact needs to be within the Administrator's and Manager's delegated authority. Any amendments outside this authority need to be made by the Council and the Board and must be submitted to the Board and Council within 90 days of the Administrator's or Manager's receipt of the proposed amendments.

E. Annual Review.

COUNTY and CITY will jointly conduct an annual review of this intergovernmental agreement beginning November 1 and ending no later than January 30 of each year to allow adjustments to upcoming COUNTY and CITY budgets. Such joint review shall include an evaluation of the effectiveness of the agreement, procedures, and the delivery of service in meeting the requirements of the agreement. The annual review shall also evaluate the costs of providing the services, reimburse the CITY for operating deficits described in section IV(A), and adjust such moneys that are transferred to the CITY to render services under this agreement. The CITY and COUNTY agree to take the results of this meeting, along with any amendments to the agreement made pursuant to paragraph D above, to their respective Board and Council within 30 days of such meeting. The Board and Council agree to take action on such request consistent with this agreement.

F. COUNTY will make changes in Article VIII of its Community Development Code (CDC) necessary to adopt changes in the CITY's development code as it applies to the area. COUNTY and CITY shall work together to ensure that all CITY code changes are promptly adopted by COUNTY.

G. The parties agree to coordinate planning efforts under Metro's 2040 Growth Concepts at a time mutually agreeable to the parties.

City shall maintain \$3,000,000 aggregate general, professional and automotive

liability insurance for claims arising from its acts and omissions in the area subject to this Agreement. County, its officers, employees and agents shall be named as an additional insured (except that County need not be named on professional insurance if that is unavailable). County shall pay to City the first year premium to a maximum of \$5,000.00. The premium for subsequent years shall be paid by City as an operating expense.

City shall periodically monitor the insurance market to determine if coverage for takings and inverse condemnation claims is available. If so, County may elect to pay the premium for said insurance in lieu of maintaining the insurance reserve provided for herein.

I. In the event City elects to terminate this Agreement prior to the end of the five (5) year term as provided for in section V, City agrees to return to County any equipment purchased with proceeds furnished by the County pursuant to this Agreement.

V. TERM OF AGREEMENT

A. This agreement shall be effective upon execution by both parties and shall remain in effect for five (5) years, or until terminated by mutual agreement of both parties. By mutual agreement, this agreement may be extended for another five (5) years. Either party may terminate this agreement between the dates of March 1 and July 1 of any year with 90 days written notice to the other party.

B. The CITY shall be responsible for processing all permits or applications for this area which have not been completed at the time of the termination of this agreement.

C. Except for County's obligation to indemnify City for City's acts or omissions, the parties' obligations as regards LUBA cases and to indemnify and defend each other pursuant to Section VI shall survive termination as to any claim arising from the actions of either party during the term of this Agreement. County's obligations to indemnify City for City's acts or omissions shall survive only to the extent of claims within two years of the termination of this Agreement and to the extent of funds remaining in the insurance reserve.

VI. HOLD HARMLESS

A. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, CITY shall hold harmless and indemnify COUNTY, its Commissioners, employees, and volunteers agents against any and all claims, damages, losses and expenses (including all attorney(s) fees and costs), arising out of or resulting from CITY's performance of this agreement where the loss or claim is attributable to the acts or omissions of the CITY, except as provided in section (IV)(B).

B. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, County shall hold harmless and indemnify CITY, its Councilors, employees, agents and volunteers against all claims, damages, losses and expenses (including all attorney fees and costs) arising out of or resulting from COUNTY's performance of this agreement where the loss or claim is attributable to the acts or omissions of COUNTY, except as provided in section (IV)(B).

VII. GENERAL PROVISION

A. SEVERABILITY: COUNTY and CITY agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

B. THIS AGREEMENT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OR PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

In WITNESS THEREOF, the parties have executed this Urban Services Intergovernmental Agreement on the date set opposite their signatures.

WASHINGTON COUNTY, OREGON

CITY OF TIGARD, OREGON

By _____
Tom Brian
Chairman, Board of County Commissioners

By _____
James Griffith
Mayor, City of Tigard

Date _____

Approved as to form:

Approved as to form:

County Counsel

City Attorney

APPROVED WASHINGTON COUNTY
BOARD OF COMMISSIONERS

MINUTE ORDER # _____

DATE _____

BY _____
CLERK OF THE BOARD

Urban Services Intergovernmental Agreement

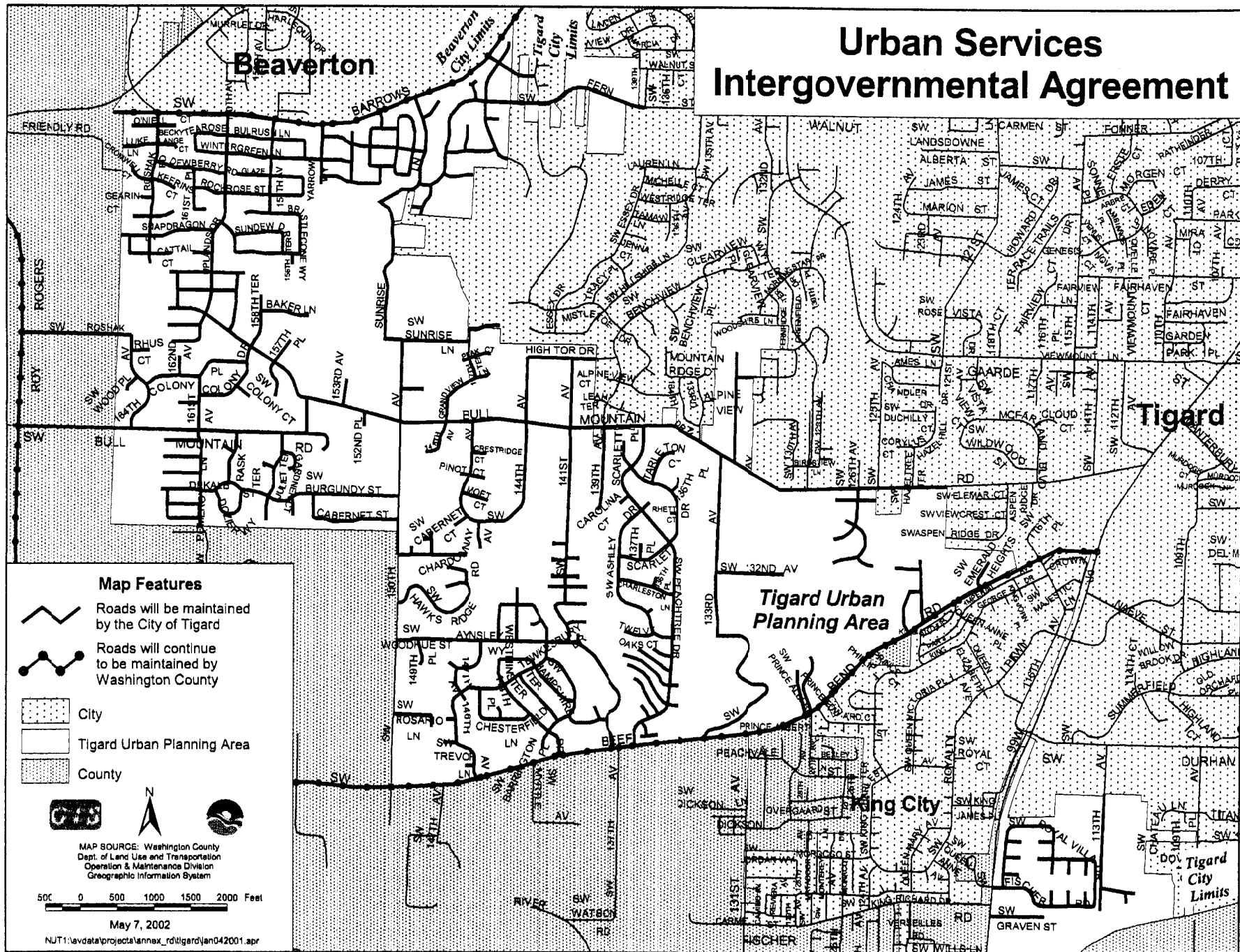


EXHIBIT 2

Urban Road Maintenance District

CITY shall provide surface maintenance (asphalt overlays and seal coats) and improvements of URMD roads (minor collector, local and public) in accordance with the work program to be negotiated each year and the funding provided by the DISTRICT. DISTRICT shall provide all other routine maintenance. CITY shall be responsible for responding to citizen complaints from the area concerning road conditions and maintenance. CITY will forward to DISTRICT those complaints that are beyond the scope of this agreement.

CITY shall keep a distinct accounting of all expenditures for repairs and maintenance under this fund.

Annually the CITY shall receive from COUNTY an amount that will be negotiated between the parties for a work program for the following year. This amount shall be established during the annual meeting of the parties as specified in the agreement and will include the estimated cost of the work plus 8% for project design, administration and inspection. Payment shall be made by COUNTY within sixty days of July 1 each year for the duration of the agreement.

EXHIBIT 3

Road Fund Maintenance

CITY shall provide surface maintenance (asphalt overlays and seal coats) and improvements of County roads (arterial and major collector) in accordance with the work program to be negotiated each year and funding provided by the COUNTY. COUNTY shall provide all other routine maintenance and traffic operations. CITY shall be responsible for responding to citizen complaints from the area concerning road conditions and maintenance. CITY will forward to COUNTY those complaints that are beyond the scope of this agreement.

CITY shall keep a distinct accounting of all expenditures for repairs and maintenance under this fund.

Annually, the CITY shall receive an amount that will be negotiated between the parties for a work program for the following year. This amount shall be established during the annual meeting of the parties as specified in the agreement and will include the estimated cost of the work plus 8% for project design, administration and inspection. Payment shall be made by COUNTY within sixty days of July 1 each year for the duration of the agreement, or sixty days after the date of agreement on the negotiated amounts, whichever is later.

EXHIBIT 4

Traffic Impact Fees

CITY shall assume responsibility for collecting traffic impact fees for the area as of date of the agreement. Funds shall be spent for projects in the area as determined by CITY working with the COUNTY in conjunction with the Washington County Coordinating Committee. A work program shall be established for the area by the parties for the area at the annual meeting of the parties. Funds allocated from the TIF shall used to finance the agreed upon work program.

CITY shall keep a subaccount of all expenditures for improvement made under this fund. CITY shall collect these fees and shall be responsible for all accounting and auditing for these fees.

EXHIBIT 5

Code Enforcement

CITY shall assume responsibility for code enforcement as of the date of this agreement. CITY shall enforce codes and respond to citizens complaints and prosecute violators for violations of Washington County Code Articles VIII and IX (Ordinances 487 and 488). CITY shall keep a log of all complaints and the response time to these complaints, as well as the results of the complaints. CITY shall keep all fines levied from violators.

EXHIBIT 6

Building Permits

City shall issue all building permits, for all activities requiring permits under the Building Codes and other CITY codes as adopted by COUNTY and perform all inspections in a timely manner. CITY shall assume responsibility for completing existing permits on the date of this agreement and all building permits requested for the area thereafter.

CITY shall keep an accounting of all funds collected and expenses in maintaining the building inspection program. Funds collected by CITY shall be used to operate the CITY building permit program for the area.

EXHIBIT 7

Park System Development Charge

If the City undertakes the preparation of an Annexation Plan for the Bull Mtn. area, which the voters approve, the County shall allow the City to collect a Park System Development Charge (SDC) for new development for the period between the approval date of the Annexation Plan and the effective date of the annexation. The initial SDC shall be the City's current rate at the time this provision is implemented, and may be adjusted according to the City's procedures for changes to the SDC. To the extent practicable, funds collected within the Bull Mtn. area shall be expended within the area.